

9-8-2011

Reynolds v. Trout Jones Gledhill Fuhrman Clerk's Record Dckt. 38933

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IN THE SUPREME COURT OF THE STATE OF IDAHO

JUSTIN S. REYNOLDS and S. KRISTINE
REYNOLDS; and SUNRISE
DEVELOPMENT, LLC,

Supreme Court Case No. 38933

Plaintiffs-Appellants,

vs.

TROUT JONES GLEDHILL FUHRMAN,
P.A.; and DAVID T. KRUECK,
individually and in his capacity as a
member of the Defendant Law Firm,

Defendants-Respondents.

CLERK'S RECORD ON APPEAL

Appeal from the District Court of the Fourth Judicial District, in and for the County of Ada.

HONORABLE RICHARD D. GREENWOOD

DONALD W. LOJEK

MICHELLE R. POINTS

ATTORNEY FOR APPELLANT

ATTORNEY FOR RESPONDENT

BOISE, IDAHO

BOISE, IDAHO

Justin S Reynolds, S Kristine Reynolds, Sunrise Development Llc vs. Trout Jones Gledhill Fuhrman PA, David Thomas Krueck

Date	Code	User		Judge
3/9/2010	NCOC	CCLATICJ	New Case Filed - Other Claims	Richard D. Greenwood
	COMP	CCLATICJ	Complaint Filed	Richard D. Greenwood
	SMFI	CCLATICJ	Summons Filed	Richard D. Greenwood
5/18/2010	ACCP	CCNELSRF	Waiver and Acceptance Of Service of Summons and Complaint (04/19/10)	Richard D. Greenwood
11/12/2010	ANSW	CCGARDAL	Answer (Points for Trout Jones, David Kruek)	Richard D. Greenwood
11/18/2010	HRSC	TCJOHNKA	Hearing Scheduled (Scheduling Conference 01/26/2011 04:30 PM) plaintiff	Richard D. Greenwood
11/22/2010	ORDR	TCJOHNKA	Order for Scheduling Conference and Order Re: Motion Practice	Richard D. Greenwood
12/14/2010	MOTN	CCWRIGRM	Defendants Motion for Summary Judgment	Richard D. Greenwood
	AFFD	CCWRIGRM	Affidavit of David T Krueck in Support of Defendants Motion for Summary Judgment	Richard D. Greenwood
	MEMO	CCWRIGRM	Memorandum in Support of Defendants Motion for Summary Judgment	Richard D. Greenwood
12/20/2010	HRSC	CCAMESLC	Notice of Hearing (Motion for Summary Judgment 01/31/2011 03:00 PM)	Richard D. Greenwood
1/10/2011	AMEN	CCCHILER	Amended Notice of Hearing (2/28/11 @ 3 pm)	Richard D. Greenwood
	HRSC	CCCHILER	Hearing Scheduled (Motion for Summary Judgment 02/28/2011 03:00 PM)	Richard D. Greenwood
1/18/2011	HRVC	TCJOHNKA	Hearing result for Motion for Summary Judgment held on 01/31/2011 03:00 PM: Hearing Vacated	Richard D. Greenwood
1/21/2011	STIP	CCCHILER	Stipulation for Scheduling and Planning	Richard D. Greenwood
1/24/2011	HRVC	TCJOHNKA	Hearing result for Scheduling Conference held on 01/26/2011 04:30 PM: Hearing Vacated plaintiff	Richard D. Greenwood
	HRSC	TCJOHNKA	Hearing Scheduled (Pretrial Conference 12/14/2011 04:30 PM) defense	Richard D. Greenwood
	HRSC	TCJOHNKA	Hearing Scheduled (Jury Trial 01/23/2012 09:00 AM) 3 days	Richard D. Greenwood
1/27/2011	ORDR	TCJOHNKA	Order Governing Further Proceedings and Setting Trial	Richard D. Greenwood
2/14/2011	BREF	CCWRIGRM	Answering/Opposition Brief of Plaintiffs in Opposition to Defendants Motion for Summary Judgment	Richard D. Greenwood
	AFFD	CCWRIGRM	Affidavit of Plaintiff Justin S Reynolds	Richard D. Greenwood
	AFFD	CCWRIGRM	Affidavit of Ylonda Hays	Richard D. Greenwood
2/22/2011	RPLY	CCVIDASL	Reply to Opposition to Motion for Summary Judgment	Richard D. Greenwood
	MOTN	CCVIDASL	Motion to Strike	Richard D. Greenwood
	MEMO	CCVIDASL	Memorandum in Support of Motion to Strike	Richard D. Greenwood
	MOTN	CCVIDASL	Motion for Order Shortening Time for Hearing on Motion to Strike	Richard D. Greenwood
	NOHG	CCVIDASL	Notice Of Hearing on Motion to Strike and Motion for Order Shortening Time (2.28.11 at 3:00 pm)	Richard D. Greenwood 000002

Justin S Reynolds, S Kristine Reynolds, Sunrise Development Llc vs. Trout Jones Gledhill Fuhrman PA, David Thomas Krueck

Date	Code	User	Judge
2/23/2011	CNST	CCWRIGRM	Consent to Motion for Shortened Time to Respond to Motion to Strike and Consent to Oral Argument, and Objection to Motion to Strike Material from Affidavits Richard D. Greenwood
2/28/2011	DCHH	TCJOHNKA	Hearing result for Motion for Summary Judgment held on 02/28/2011 03:00 PM: District Court Hearing Held Court Reporter: Fran Morris Number of Transcript Pages for this hearing estimated: less than 60 pages Richard D. Greenwood
	ORDR	TCJOHNKA	Order Shortening Time for hearing on Defendant's Motion to Strike Richard D. Greenwood
3/14/2011	MOTN	CCCHILER	Motion for an Award of Attorney Fees and Costs Richard D. Greenwood
	AFFD	CCCHILER	Affidavit of Michelle R Points Setting Forth Memorandum of Costs and Attorney Fees Richard D. Greenwood
	MEMO	CCCHILER	Memorandum in Support of Motion for Costs and Attorney Fees Richard D. Greenwood
3/21/2011	NOHG	CCSULLJA	Notice Of Hearing (04/25/11 @ 4:00 PM) Richard D. Greenwood
	HRSC	CCSULLJA	Hearing Scheduled (Hearing Scheduled 04/25/2011 04:00 PM) Defendants' Motion for an Award of Attorney Fees and Costs Richard D. Greenwood
	ORDR	TCJOHNKA	Order Richard D. Greenwood
	JDMT	TCJOHNKA	Judgment Richard D. Greenwood
3/24/2011	CDIS	TCJOHNKA	Civil Disposition entered for: Krueck, David Thomas, Defendant; Trout Jones Gledhill Fuhrman PA, Defendant; Reynolds, Justin S, Plaintiff; Reynolds, S Kristine, Plaintiff; Sunrise Development Llc, Plaintiff. Filing date: 3/24/2011 Richard D. Greenwood
3/28/2011	OBJE	MCBIEHKJ	Objection to Motion for Fees and Costs Richard D. Greenwood
	AMEN	CCWRIGRM	Amended Notice of Hearing (05/11/11 @ 4:00pm) Richard D. Greenwood
	HRSC	CCWRIGRM	Hearing Scheduled (Hearing Scheduled 05/11/2011 04:00 PM) Motion for Award of Attorney Fees and Costs Richard D. Greenwood
4/4/2011	MOTN	CCMASTLW	Motion to Alter & Amend Judgment Richard D. Greenwood
	MEMO	CCMASTLW	Memorandum in Support Richard D. Greenwood
	NOHG	CCMASTLW	Notice Of Hearing (04/25/11 @ 4PM) Richard D. Greenwood
4/8/2011	OPPO	CCCHILER	Defendants' Opposition to Plaintiffs' Motion to Alter or Amend Judgment Richard D. Greenwood
4/18/2011	REPL	MCBIEHKJ	Reply Brief on Motion to Alter or Amend Judgment Richard D. Greenwood
4/25/2011	DCHH	TCJOHNKA	Hearing result for Hearing Scheduled held on 04/25/2011 04:00 PM: District Court Hearing Held Court Reporter: Kim Madsen Number of Transcript Pages for this hearing estimated: less than 50 pages Richard D. Greenwood

Case: CV-OC-2010-04458 Current Judge: Richard D. Greenwood
Justin S Reynolds, etal. vs. Trout Jones Gledhill Fuhrman PA, etal.

Justin S Reynolds, S Kristine Reynolds, Sunrise Development Llc vs. Trout Jones Gledhill Fuhrman PA, David Thomas Krueck

Date	Code	User	Judge
5/2/2011	AFFD	CCSIMMSM	Supplemental Affidavit of Michelle R. Points Setting Forth Memorandum of Costs and Attorney Fees
5/11/2011	HRVC	TCJOHNKA	Hearing result for Pretrial Conference held on 12/14/2011 04:30 PM: Hearing Vacated defense
	HRVC	TCJOHNKA	Hearing result for Hearing Scheduled held on 05/11/2011 04:00 PM: Hearing Vacated Motion for Award of Attorney Fees and Costs
5/18/2011	HRVC	TCJOHNKA	Hearing result for Jury Trial held on 01/23/2012 09:00 AM: Hearing Vacated 3 days
	ORDR	TCJOHNKA	Order
	JDMT	TCJOHNKA	Amended Judgment
	STAT	TCJOHNKA	STATUS CHANGED: closed
5/27/2011	JDMT	TCJOHNKA	Second Amended Judgment
6/27/2011	APSC	CCLUNDMJ	Appealed To The Supreme Court
6/28/2011	NOTC	CCLUNDMJ	Notice of Substitution of Counsel (Lojek for Plaintiff's)
7/18/2011	RQST	CCCHILER	Request for Additional Documents and transcripts on Appeal
7/22/2011	AMEN	CCWRIGRM	Amended Request for Additional Documents and Transcripts on Appeal
8/9/2011	NOTC	CCTHIEBJ	(2) Notice Of Transcript Lodged - Supreme Court Docket No. 38933

Robert C. Huntley ISB#894
The HUNTLEY LAW FIRM PLLC
815 W. Washington Street
P.O. Box 2188
Boise, Idaho 83701
Telephone: 208-388-1230
Facsimile: 208-388-0234
rhuntley@huntleylaw.com

Attorney for Plaintiffs

ORIGINAL

NC _____ FILE # _____
A.M. _____

MAR 09 2010

J. DAVID NAVARRO, Clerk
By CARLY LATIMORE
DEPUTY

**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

JUSTIN S. REYNOLDS and S. KRISTINE
REYNOLDS; and SUNRISE
DEVELOPMENT LLC,

Plaintiffs,

v.

TROUT JONES GLEDHILL FUHRMAN,
P.A.; and DAVID T. KRUECK, individually
and in his capacity as a member of the
Defendant Law Firm,

Defendants.

Case No.

CV 00 1004458

Fee Category 1A

**Complaint
and
Demand for Jury Trial**

Plaintiffs as their claim allege:

JURISDICTION AND VENUE

1. Plaintiffs and Defendants are all residents of or incorporated in the state of Idaho. The Defendant law firm has its principal place of business in Ada County, Idaho and the arrangements between the parties were executed and transacted in Ada County. The damages involved exceed the minimum required for District Court jurisdiction.

COMPLAINT AND DEMAND FOR JURY TRIAL - 1

000005

2. The Defendant, David T. Krueck at all times material has been and is a practicing attorney in the state of Idaho and the acts or omissions which are the subject of this action were in the course and scope of his employment with the law firm of the Defendant, Trout Jones Gledhill Fuhrman, P.A.

STATEMENT OF THE FACTS

3. Defendant was employed by Plaintiffs to draft a real estate contract for the purchase of an acreage for development in Ada County, Idaho. The real estate Purchase and Sale Agreement for the purchase by Plaintiffs from Quasar Development LLC, ("Sellers") of a parcel of land which would accommodate the construction of approximately 30 town-home lots for approximately \$3,450,000, carried with it a provision for an Earnest Money payment of \$60,000.

4. The Earnest Money was returnable to the Purchasers if the Seller was unable to procure a platting of the property within twelve months. The platting was not finalized and approved within twelve months and the Plaintiffs then sought the return from the Seller of the \$60,000 Earnest Money, pursuant to the terms of the Purchase and Sale Agreement.

5. Upon demand by Plaintiffs for the return of the Earnest Money, the Sellers refused to make timely reimbursement based upon the fact that the Purchase and Sale Agreement did not require any particular time certain for the return of the money. Plaintiffs were then required to file suit in Ada County District Court to compel return of the Earnest Money.

6. Additionally, the Purchase and Sale Agreement was defectively drafted in that it did not make clear whether the entire \$60,000 was refundable upon the failure to obtain a plat, or whether \$30,000 would be the refundable sum.

7. On or about March 11, 2008 the Court determined that the refundable amount was \$60,000 and determined further that in the absence of the Purchase and Sale Agreement having specified a time for refund of the \$60,000, that a question of fact remained for trial. The Court determined that under the totality of the circumstances of the case, the deadline for repayment would be a reasonable time, and that further litigation would be required to establish what a reasonable time would be.

8. The parties then commenced negotiations resulting in an agreement for a stipulated judgment entered September 2, 2008 stipulating that the entire \$60,000 was then due and payable, subject to Plaintiffs agreeing not to execute on the judgment until August 15, 2009.

9. The Defendant Attorney, David Krueck, had failed to timely file his reply brief in the court proceedings leading up to March 11, 2008, which reply brief dealt in part with the issue of the reasonable time for return of the Earnest Money deposit. The trial court rejected that brief as untimely.

10. As a result of the malpractice and defects in scrivener-ship by David Krueck, the \$60,000 has never been repaid because the Quasar Development LLC had become insolvent and have been and continue to be unable to make payment. Quasar was not insolvent at the time the money would have been due had the Purchase and Sale Agreement been properly crafted.

11. As a result of Defendants' negligence, the Plaintiffs have been damaged in the amount of the \$60,000 Earnest Money deposit plus, additionally, attorneys fees and other expenses bringing their total damages in excess of \$77,000 plus interest, the exact amount of which will be proven at trial, and which amount the Defendants should be required to pay to Plaintiffs.

12. Plaintiffs are entitled to a reasonable attorney's fee pursuant to Idaho Code Section 12-120(3).

WHEREFORE, Plaintiffs pray judgment as follows:

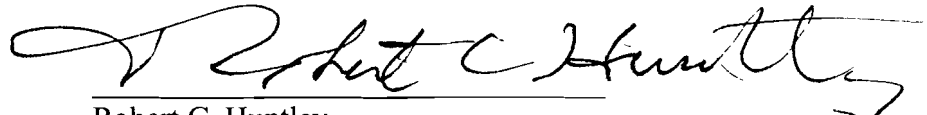
1. For general damages in the sum of \$77,000 or such other and further amount as may be proven at trial.

2. For their costs and reasonable attorney fees and such other and further relief as may be meet and equitable in the premises.

PLAINTIFFS HEREBY DEMAND A TRIAL BY JURY.

DATED this 9th day of March, 2010.

The HUNTLEY LAW FIRM


Robert C. Huntley

NOV 12 2010

J. DAVID NAVARRO, Clerk
By A. GARDEN
DEPUTY

Craig L. Meadows, ISB No. 1081
Michelle R. Points, ISB No. 6224
HAWLEY TROXELL ENNIS & HAWLEY LLP
877 Main Street, Suite 1000
P.O. Box 1617
Boise, ID 83701-1617
Telephone: 208.344.6000
Facsimile: 208.954.5252
Email: cmeadows@hawleytroxell.com
mpoints@hawleytroxell.com

Attorneys for Defendants Trout Jones Gledhill Fuhrman
P.A. and David T. Krueck

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

JUSTIN S. REYNOLDS and S. KRISTINE
REYNOLDS; and SUNRISE
DEVELOPMENT, LLC,,

Plaintiffs,

vs.

TROUT JONES GLEDHILL FUHRNAM,
P.A.; and DAVID T. KRUECK, individually
and in his capacity as a member of the
Defendant Law Firm.,

Defendants.

Case No. CV OC 1004458

ANSWER

COMES NOW Defendants Trout Jones Gledhill Fuhrman, P.A. and David T. Krueck
(collectively "Defendants"), by and through their counsel of record, Hawley Troxell Ennis &
Hawley, LLP, and by way of answer to the Complaint and Demand for Jury Trial ("Complaint")

filed by Plaintiffs Justin S. Reynolds, Kristine Reynolds and Sunrise Development, LLC, admits, denies and alleges as follows:

ADMISSIONS AND DENIALS

1. Defendants deny all allegations not specifically admitted herein.
2. With respect to the allegations set forth in paragraph 1 of the Complaint, Defendants deny that Plaintiffs have suffered any damages, but admit the remaining allegations set forth therein.
3. With respect to the allegations set forth in paragraph 2 of the Complaint, Defendants admit that at all times material, Defendant David Krueck was authorized to practice as an attorney in the state of Idaho, but deny the remaining allegations set forth therein as those allegations set forth conclusions of law to which no response is required.
4. Defendants deny the allegations set forth in paragraph 3 of the Complaint as the terms of the referenced document speak for themselves.
5. With respect to the allegations set forth in paragraph 4 of the Complaint, Defendants admit the Earnest Money was returnable and that Plaintiffs sought return of the Earnest Money pursuant to the terms of the Real Estate Purchase Agreement, but deny the remaining allegations set forth therein, as stated.
6. With respect to the allegations set forth in paragraph 5 of the Complaint, Defendants admit that upon demand by Plaintiffs for the return of the Earnest Money, the Sellers refused to pay them the Earnest Money, and that Plaintiffs were required to file a lawsuit in Ada County District Court to compel the return of the Earnest Money, but deny the remaining allegations set forth therein, as stated.
7. Defendants deny the allegations set forth in paragraph 6 of the Complaint.

8. Defendants deny the allegations set forth in paragraph 7 of the Complaint as the terms of the referenced Order speak for themselves.

9. Defendants deny the allegations set forth in paragraphs 8 and 9 of the Complaint, as stated.

10. Defendants deny the allegations set forth in paragraphs 10, 11 and 12 of the Complaint.

AFFIRMATIVE DEFENSES

The following defenses are not stated separately as to each claim for relief or allegation of Plaintiffs. Nevertheless, the following defenses are applicable, where appropriate, to any and all of Plaintiffs' claims for relief. In addition, Defendants, in asserting the following defenses, do not admit that the burden of proving the allegations or denials contained in the defenses is upon Defendants but, to the contrary, assert that by reason of denials and/or by reason of relevant statutory and judicial authority, the burden of proving the facts relevant to many of the defenses and/or the burden of proving the inverse of the allegations contained in many of the defenses is upon Plaintiffs. Moreover, Defendants do not admit, in asserting any defense, any responsibility or liability of Defendants but, to the contrary, specifically denies any and all allegations of responsibility and liability in the Complaint.

FIRST AFFIRMATIVE DEFENSE

Plaintiffs are barred from maintaining this action against Defendants based upon Section 5-219(4) of the Idaho Code and/or any other applicable statute of limitation.

SECOND AFFIRMATIVE DEFENSE

Plaintiff are barred from maintaining this action against Defendants by reason of Plaintiffs' voluntary assumption of a known risk.

THIRD AFFIRMATIVE DEFENSE

Plaintiffs are barred from maintaining this action against Defendants because Defendant's actions were taken with Plaintiffs' consent.

FOURTH AFFIRMATIVE DEFENSE

Plaintiffs' recovery in this action, if any, should be reduced in accordance with the doctrine of avoidable consequences.

FIFTH AFFIRMATIVE DEFENSE

Plaintiffs are barred from maintaining this action against Defendants because Plaintiffs' injuries, if any, were proximately caused, in whole or in part, by the negligence or other conduct of parties other than these Defendants and/or of persons not parties to this action.

SIXTH AFFIRMATIVE DEFENSE

Plaintiffs are barred from maintaining this action against Defendants based upon the doctrine of laches.

SEVENTH AFFIRMATIVE DEFENSE

Plaintiffs are barred from maintaining this action against Defendants based upon the doctrine of waiver.

EIGHTH AFFIRMATIVE DEFENSE

Plaintiffs are barred from maintaining this action against Defendants based upon the doctrine of estoppel.

NINTH AFFIRMATIVE DEFENSE

Plaintiffs are barred from maintaining this action against Defendants because Defendant's acts were justified.

TENTH AFFIRMATIVE DEFENSE

Plaintiffs should be denied any equitable relief herein on the ground of unclean hands.

ATTORNEY FEES AND COSTS

In order defend this matter, Defendants have been required to retain the services of Hawley Troxell Ennis and Hawley, LLP and should be awarded their reasonable attorney fees and costs incurred in defending this action pursuant to Idaho Code § 12-120(3), Idaho Rule of Civil Procedure 54 and other applicable law.

RESPONSE TO PLAINTIFFS' DEMAND FOR RELIEF

In response to Plaintiffs' prayer for relief, Defendants deny that Plaintiffs are entitled to any of the relief requested. As previously set forth and stated, Defendants expressly denies each and every allegation of the Plaintiffs' Complaint not specifically admitted by way of answer to the Complaint.

RULE 11 STATEMENT

Defendants have considered and believe that they may have additional defenses, but does not have enough information at this time to assert such additional defenses under Rule 11 of the Idaho Rules of Civil Procedure. Defendants do not intend to waive any such defenses and specifically asserts its intention to amend this answer if, pending research and after discovery, facts come to light giving rise to such additional defenses.

DEMAND FOR JURY TRIAL

Defendants hereby demand a trial by jury as to all issues so triable, and will not stipulate to a jury of less than twelve (12) jurors.

PRAYER FOR RELIEF

WHEREFORE, Defendants pray for entry of judgment as follows:

1. That Plaintiffs' Complaint be dismissed and Plaintiffs take nothing thereby;
2. That Defendants be awarded reasonable attorney fees and costs necessarily incurred in defending this action; and
3. For such other and further relief as the Court deems just and proper.

DATED THIS 12th day of November, 2010.

HAWLEY TROXELL ENNIS & HAWLEY LLP

By 

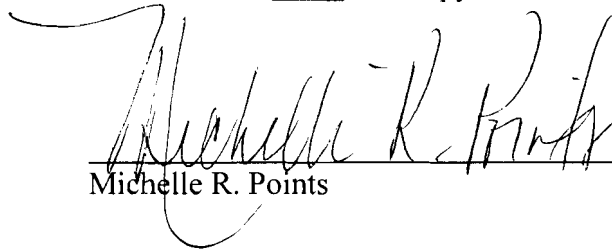
Michelle R. Points, ISB No. 6224
Attorneys for Defendants Trout Jones Gledhill
Fuhrman P.A. and David T. Krueck

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 12th day of November, 2010, I caused to be served a true copy of the foregoing ANSWER by the method indicated below, and addressed to each of the following:

Robert C. Huntley
The HUNTLEY LAW FIRM PLLC
815 W. Washington Street
P.O. Box 2188
Boise, ID 83701

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☒ E-mail
☒ Telecopy: 208.388.0234



Michelle R. Points

Trout Jones Gledhill Fuhrman Gourley, P.A.

20-4944753

225 N 9th St., Ste. 820, PO Box 1097

Boise, ID 83701

Ph:(208) 331-1170

Fax:(208) 331-1529

Jun 25, 2006

Sunrise Development LLC

372 S. Eagle #155

Eagle, ID 83616

File #: 4232-001

Inv #: 14

RE: Quasar Development, LLC

DATE	DESCRIPTION	HOURS	AMOUNT	LAWYER
Jun-14-2006	Review letter of intent; Calls to client	0.70	115.50	DTK
Jun-15-2006	Call to client re: letter of intent and negotiations with Quasar	0.20	33.00	DTK
	Totals	0.90	\$148.50	

Total Fees & Disbursements	\$148.50
Transferred from Trust to General	\$0.00
Previous Balance	\$0.00
Previous Payments Since Last Bill	\$0.00
Balance Due Now	\$148.50

EXHIBIT

000016

Trout Jones Gledhill Fuhrman Gourley, P.A.

20-4944753
225 N 9th St., Ste. 820, PO Box 1097
Boise, ID 83701

Ph:(208) 331-1170

Fax:(208) 331-1529

Jul 31, 2006

Sunrise Development LLC
372 S. Eagle #155
Eagle, ID 83616

File #: 4232-001
Inv #: 421

RE: Quasar Development, LLC

DATE	DESCRIPTION	HOURS	AMOUNT	LAWYER
Jun-29-2006	Review P/S Agreement and letter of intent	1.40	231.00	DTK
	call to client RE: revision to P/S Agreement	0.70	115.50	DTK
	Revise P/S Agreement call and fax to client	1.20	198.00	DTK
	Additional revisions to P/S Agreement	0.40	66.00	DTK
	Call from counsel for Quasar RE: contract terms	0.40	66.00	DTK
Jul-05-2006	Call to client re:status of contract negotiations	0.20	33.00	DTK
Jul-07-2006	review email from opposing counsel; call from client	0.20	33.00	DTK
Jul-09-2006	Analyze latest draft of P/S Agreement from sellers counsel; review previous draft we submitted; annotate issues and proposed revisions & review email comments from opposing counsel	1.50	247.50	DTK
Jul-10-2006	Draft email with comments re: revisions to purchase & sale agreement to client; Analyze drafts and letter of intent provision	0.90	148.50	DTK
	Call to client re: negotiations	0.20	33.00	DTK

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Invoice #: 421

Page 2

July 31, 2006

Jul-18-2006	Email to/from client; Revise purchase & sale agreement	0.50	82.50	DTK
Jul-20-2006	Review final draft emailed from opposing counsel. Email the same to client with comments.	0.50	82.50	DTK
	Call from client. Email to opposing counsel with additional revisions to Release Agreement.	0.50	82.50	DTK
Totals		8.60	\$1,419.00	

Total Fees & Disbursements	\$1,419.00
Transferred from Trust to General	\$0.00
Previous Balance	\$148.50
Previous Payments Since Last Bill	\$148.50
Balance Due Now	\$1,419.00

000018

Trout Jones Gledhill Fuhrman Gourley, P.A.

20-4944753
225 N 9th St., Ste. 820, PO Box 1097
Boise, ID 83701

Ph:(208) 331-1170

Fax:(208) 331-1529

Jul 26, 2007

Sunrise Development LLC
372 S. Eagle #155
Eagle, ID 83616

File #: 4232-001
Inv #: 3977

RE: Quasar Development, LLC

DATE	DESCRIPTION	HOURS	AMOUNT	LAWYER
Jul-17-2007	Review Purchase and Sale Agreement; call to client	0.60	105.00	DTK
	Totals	0.60	\$105.00	

Total Fees & Disbursements	\$105.00
Transferred from Trust to General	\$0.00
Previous Balance	\$1,419.00
Previous Payments Since Last Bill	\$1,419.00
Balance Due Now	\$105.00

000019

Trout Jones Gledhill Fuhrman Gourley, P.A.

20-4944753

225 N 9th St., Ste. 820, PO Box 1097

Boise, ID 83701

Ph:(208) 331-1170

Fax:(208) 331-1529

Aug 28, 2007

Sunrise Development LLC

372 S. Eagle #155

Eagle, ID 83616

File #: 4232-001

Inv #: 4249

RE: Quasar Development, LLC

DATE	DESCRIPTION	HOURS	AMOUNT	LAWYER
Jul-31-2007	Review Purchase Agreement; draft termination letter to Seller and Seller's attorney; review notice and escrow provisions in Agreement; call to client	0.70	122.50	DTK
Aug-09-2007	Letter to opposing counsel re: default and breach of contract; call from client	0.40	70.00	DTK
Aug-14-2007	Call from client; call to opposing counsel; draft default and demand letter to Quasar	0.50	87.50	DTK
	Review Quasar email; forward to client with comments	0.20	35.00	DTK
Aug-15-2007	Multiple calls to and from client and opposing counsel re: issues relating to refund of earnest money deposit and strategy going forward	0.40	70.00	DTK
Aug-16-2007	Multiple emails and phone calls to and from client and opposing counsel re: terms for resolving refund of earnest money and related issues	0.50	87.50	DTK
Aug-17-2007	Review promissory note from opposing counsel; draft Personal Guaranties for principals of Quasar; email to client	0.80	140.00	DTK
	Totals	3.50	\$612.50	

000020

Total Fees & Disbursements	\$612.50
Transferred from Trust to General	\$0.00
Previous Balance	\$105.00
Previous Payments Since Last Bill	\$0.00
Balance Due Now	\$717.50

Trout Jones Gledhill Fuhrman Gourley, P.A.

20-4944753

225 N 9th St., Ste. 820, PO Box 1097

Boise, ID 83701

Ph:(208) 331-1170

Fax:(208) 331-1529

Sep 28, 2007

Sunrise Development LLC

372 S. Eagle #155

Eagle, ID 83616

File #: 4232-001

Inv #: 4612

RE: Quasar Development, LLC

DATE	DESCRIPTION	HOURS	AMOUNT	LAWYER
Aug-31-2007	Calls to and from client and opposing counsel; call to client's banker; revise Personal Guaranties	0.30	52.50	DTK
Sep-04-2007	Call and email from opposing counsel re: guaranties and note; call to client re: status	0.50	87.50	DTK
Sep-05-2007	review letter and email from opposing counsel; call to client; review Note and Purchase Agreement re: remedies available upon default	0.50	87.50	DTK
Sep-06-2007	Conference with DK in re available remedies for breach of underlying agreement and prom note. (No Charge)	0.30	0.00	SJG
Sep-10-2007	Emails to and from opposing counsel; call from client re: status	0.30	52.50	DTK
Sep-18-2007	Communicate (in firm) with DTK to prepare a complaint on behalf of client (No Charge)	0.40	0.00	BRW
Sep-19-2007	Call to opposing counsel and client re: Quasar payment	0.20	35.00	DTK
Sep-24-2007	Teleconference with client re: Quasar strategy and process going forward	0.50	87.50	DTK
	Review and revise Complaint against Quasar	0.80	140.00	DTK

000022

Draft/revise complaint against Quesar	2.90	150.00	BRW
Sep-25-2007 Revise and finalize Complaint; prepare Summons for filing with the Court	1.30	227.50	DTK
Draft/revise complaint against Quasar	0.10	0.00	BRW
Totals	8.10	\$920.00	

DISBURSEMENTS

Sep-25-2007 Filing Fee: Complaint (Ann)

Disbursements

88.00

Receipts

Totals

\$88.00

\$0.00

Total Fees & Disbursements**\$1,008.00**

Transferred from Trust to General

\$0.00

Previous Balance

\$717.50

Previous Payments Since Last Bill

\$717.50

Balance Due Now**\$1,008.00**

Trout Jones Gledhill Fuhrman Gourley, P.A.

20-4944753

225 N 9th St., Ste. 820, PO Box 1097

Boise, ID 83701

Ph:(208) 331-1170

Fax:(208) 331-1529

Oct 31, 2007

Sunrise Development LLC

372 S. Eagle #155

Eagle, ID 83616

File #: 4232-001

Inv #: 5008

RE: Quasar Development, LLC

DATE	DESCRIPTION	HOURS	AMOUNT	LAWYER
Oct-01-2007	Review letter and pleadings from opposing counsel; email to client	0.20	35.00	DTK
	Totals	0.20	\$35.00	

Total Fees & Disbursements	\$35.00
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Transferred from Trust to General	\$0.00
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Previous Balance	\$1,008.00
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Previous Payments Since Last Bill	\$0.00
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Balance Due Now	\$1,043.00
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000024

Trout Jones Gledhill Fuhrman Gourley, P.A.

20-4944753

225 N 9th St., Ste. 820, PO Box 1097

Boise, ID 83701

Ph:(208) 331-1170

Fax:(208) 331-1529

Nov 29, 2007

Sunrise Development LLC

372 S. Eagle #155

Eagle, ID 83616

File #: 4232-001

Inv #: 5202

RE: Quasar Development, LLC

DATE	DESCRIPTION	HOURS	AMOUNT	LAWYER
Oct-31-2007	Call from client; review Scheduling Order from Court; call from opposing counsel re: stipulation for scheduling	0.40	70.00	DTK
Nov-02-2007	stipulated scheduling order for trial w/ Quasar	0.30	37.50	BRW
Nov-12-2007	phone call w/ Andrus regarding stipulated order	0.20	25.00	BRW
	Totals	0.90	\$132.50	

Total Fees & Disbursements	\$132.50
Transferred from Trust to General	\$0.00
Previous Balance	\$1,043.00
Previous Payments Since Last Bill	\$1,008.00
Balance Due Now	\$167.50

000025

Trout Jones Gledhill Fuhrman Gourley, P.A.

20-4944753

225 N 9th St., Ste. 820, PO Box 1097

Boise, ID 83701

Ph:(208) 331-1170

Fax:(208) 331-1529

Jan 02, 2008

Sunrise Development LLC

372 S. Eagle #155

Eagle, ID 83616

File #: 4232-001

Inv #: 5490

RE: Quasar Development, LLC

DATE	DESCRIPTION	HOURS	AMOUNT	LAWYER
Nov-27-2007	discussion w/ DTK regarding motion for SJ	0.30	37.50	BRW
Nov-28-2007	research case law, draft motion, affidavit, memo in support of SJ	4.40	550.00	BRW
Nov-29-2007	motion for SJ, memo in support, affidavits	0.80	100.00	BRW
Nov-30-2007	Revise Affidavits and Motion for Summary Judgment	0.50	87.50	DTK
	Call to client re: status and strategy going forward	0.40	70.00	DTK
Dec-04-2007	Revisions to summary judgment pleadings; review contract and file correspondence; finalize all pleadings and obtain hearing date from Court	1.20	210.00	DTK
Dec-14-2007	Call from opposing counsel re: stipulation to judgment; call to client	0.20	35.00	DTK
Dec-17-2007	Calls to and from client and opposing counsel re: potential settlement; review file	0.50	87.50	DTK
Dec-18-2007	Multiple calls to and from client and opposing counsel re: settlement terms; email counteroffer to opposing counsel	0.70	122.50	DTK

000026

Totals

9.00 \$1,300.00

DISBURSEMENTS**Disbursements****Receipts**Dec-01-2007 Thomson West - Legal Research - Nov 1, 2007
through Nov 30, 2007 - Inv. #814956285

10.10

Totals

\$10.10

\$0.00

Total Fees & Disbursements**\$1,310.10**

Transferred from Trust to General

\$0.00

Previous Balance

\$167.50

Previous Payments Since Last Bill

\$35.00

Balance Due Now**\$1,442.60**

Trout Jones Gledhill Fuhrman Gourley, P.A.

20-4944753

225 N 9th St., Ste. 820, PO Box 1097

Boise, ID 83701

Ph:(208) 331-1170

Fax:(208) 331-1529

Jan 30, 2008

Sunrise Development LLC

372 S. Eagle #155

Eagle, ID 83616

File #: 4232-001

Inv #: 5876

RE: Quasar Development, LLC

DATE	DESCRIPTION	HOURS	AMOUNT	LAWYER
Dec-27-2007	Review opposition to our motion for summary judgment; call to client to discuss strategy going forward	0.80	140.00	DTK
Jan-10-2008	legal research re: reasonable time for payment, earnest money, ordinary course of business	3.00	375.00	BRW
Jan-11-2008	legal research re: reasonable time for payment performance, real estate, ordinary course, refund, real property - draft memo regarding research results	2.00	250.00	BRW
	legal research re: unreasonable delay, preference	2.50	312.50	BRW
Jan-14-2008	research re: failure to cite authority, reasonable time for payment, draft section of brief arguing reasonable time has passed	1.50	187.50	BRW
Jan-15-2008	draft/revise section of reply brief regarding reasonable time, legal research re: bad faith	0.30	37.50	BRW
	Totals	10.10	\$1,302.50	

000028

Total Fees & Disbursements	\$1,302.50
Transferred from Trust to General	\$0.00
Previous Balance	\$1,442.60
Previous Payments Since Last Bill	\$0.00
Balance Due Now	\$2,745.10

Trout Jones Gledhill Fuhrman Gourley, P.A.

20-4944753
225 N 9th St., Ste. 820, PO Box 1097
Boise, ID 83701

Ph:(208) 331-1170

Fax:(208) 331-1529

Feb 28, 2008

Sunrise Development LLC
372 S. Eagle #155
Eagle, ID 83616

File #: 4232-001
Inv #: 6233

RE: Quasar Development, LLC

DATE	DESCRIPTION	HOURS	AMOUNT	LAWYER
Feb-05-2008	Work on Reply Brief in Support of our motion for summary judgment	3.70	647.50	DTK
Feb-06-2008	Complete drafting and finalizing Reply Brief; complete all research and analysis of pleadings filed by Defendants	3.30	577.50	DTK
	legal research re: time is of the essence (No Charge)	1.10	0.00	BRW
Feb-11-2008	Call from opposing counsel re: settlement; call to client	0.30	52.50	DTK
Feb-13-2008	Prep for summary judgment hearing; review pleadings and Agreement; review Affidavits and Exhibits; legal research; prepare hearing outline; review docs from client re: appraisal and settlement	3.50	612.50	DTK
	Argue our Motion for Summary Judgment before Judge Williamson	1.30	227.50	DTK
	assist in preparation for DTK's oral argument, legal research re: time is of the essence, refund on demand (No Charge)	1.90	0.00	BRW
	assist DTK at oral argument (No Charge)	1.00	0.00	BRW

000030

Totals

16.10 \$2,117.50

DISBURSEMENTS**Disbursements****Receipts**Feb-01-2008 Thomson West - Legal Research - Jan 1, 2008
through Jan 31, 2008 - Inv. # 815364745

57.63

Totals

\$57.63

\$0.00

Total Fees & Disbursements**\$2,175.13**

Transferred from Trust to General

\$0.00

Previous Balance

\$2,745.10

Previous Payments Since Last Bill

\$0.00

Balance Due Now**\$4,920.23**

Trout Jones Gledhill Fuhrman Gourley, P.A.

20-4944753
225 N 9th St., Ste. 820, PO Box 1097
Boise, ID 83701

Ph:(208) 331-1170

Fax:(208) 331-1529

Mar 27, 2008

Sunrise Development LLC
372 S. Eagle #155
Eagle, ID 83616

File #: 4232-001
Inv #: 6501

RE: Quasar Development, LLC

DATE	DESCRIPTION	HOURS	AMOUNT	LAWYER
Mar-03-2008	Review offer letter from opposing counsel; email and call to client	0.20	35.00	DTK
	Totals	0.20	\$35.00	

DISBURSEMENTS

Disbursements

Receipts

Mar-01-2008 Thomson West - Legal Research - Feb 1, 2008
through Feb 29, 2008 - Inv. # 815532888

1.58

Totals

\$1.58

\$0.00

Total Fees & Disbursements

\$36.58

Transferred from Trust to General

\$0.00

Previous Balance

\$4,920.23

Previous Payments Since Last Bill

\$0.00

Balance Due Now

\$4,956.81

000032

Trout Jones Gledhill Fuhrman Gourley, P.A.

20-4944753

225 N 9th St., Ste. 820, PO Box 1097

Boise, ID 83701

Ph:(208) 331-1170

Fax:(208) 331-1529

Apr 29, 2008

Sunrise Development LLC

372 S. Eagle #155

Eagle, ID 83616

File #: 4232-001

Inv #: 6829

RE: Quasar Development, LLC

DATE	DESCRIPTION	HOURS	AMOUNT	LAWYER
Apr-15-2008	Call from opposing counsel re: settlement; call to client	0.30	52.50	DTK
	Totals	0.30	\$52.50	

Total Fees & Disbursements	\$52.50
Transferred from Trust to General	\$0.00
Previous Balance	\$4,956.81
Previous Payments Since Last Bill	\$0.00
Balance Due Now	\$5,009.31

000033

Trout Jones Gledhill Fuhrman Gourley, P.A.

20-4944753
225 N 9th St., Ste. 820, PO Box 1097
Boise, ID 83701

Ph:(208) 331-1170

Fax:(208) 331-1529

Jun 27, 2008

Sunrise Development LLC
372 S. Eagle #155
Eagle, ID 83616

File #: 4232-001
Inv #: 7576

RE: Quasar Development, LLC

DATE	DESCRIPTION	HOURS	AMOUNT	LAWYER
Jun-09-2008	Review file and trial order; draft letter to opposing counsel re: discovery and potential settlement; email to client	0.40	70.00	DTK
Jun-18-2008	review response from opposing counsel to previous correspondence; outline discovery plan and deposition notice for Amanda Alvaro	0.50	87.50	DTK
	Totals	0.90	\$157.50	

Total Fees & Disbursements	\$157.50
Transferred from Trust to General	\$0.00
Previous Balance	\$5,009.31
Previous Payments Since Last Bill	\$4,956.81
Balance Due Now	\$210.00

000034

Trout Jones Gledhill Fuhrman Gourley, P.A.

20-4944753

225 N 9th St., Ste. 820, PO Box 1097

Boise, ID 83701

Ph:(208) 331-1170

Fax:(208) 331-1529

Jul 29, 2008

Sunrise Development LLC

372 S. Eagle #155

Eagle, ID 83616

File #: 4232-001

Inv #: 7879

RE: Quasar Development, LLC

DATE	DESCRIPTION	HOURS	AMOUNT	LAWYER
Jun-26-2008	Receive and review file; begin preparation of discovery materials.	1.30	0.00	RWH
Jun-27-2008	Prepare draft notice of deposition to Amanda Alvaro; 30(b)(6) Notice; subpoena duces tecum; begin draft of First Interrogatories and Requests for Production.	2.40	300.00	RWH
Jun-28-2008	Complete draft of First Set of Interrogatories and Requests for Production.	1.80	225.00	RWH
Jun-30-2008	revise Deposition and Subpoena Notices; reivew file notes and correspondence; conference with Red H.	0.80	140.00	DTK
	Trial preparation; review deadlines, prepare notice of lay witnesses.	0.90	112.50	RWH
Jul-01-2008	Work on Discovery Requests; review and outline discovery responses and trial strategy	1.50	262.50	DTK
Jul-02-2008	research potential experts for Case; review discovery served on Sunrise; conference with Reid re: responses and trial strategy	1.00	175.00	DTK
	Examine discovery requests propounded by defendants; office conference with attorney Krueck.	0.40	50.00	RWH

000035

Jul-03-2008	Revise and finalize discovery requests to Quasar	0.50	87.50	DTK
	Work on locating experts to testify at trial; calls and emails to First American Title, Colliers and Thornton Oliver Keller to attempt to retain expert; emails and calls to Idaho Mutual Trust re: additional expert witnesses	1.00	175.00	DTK
Jul-07-2008	Review discovery requests from Quasar; search for expert; calls to and from brokers at Colliers and Thornton Oliver Keller; calls to and from Steve Weeks and other potential experts; call to Marty Igo; meet with Gourley re: experts for case	2.20	385.00	DTK
Jul-08-2008	Review IRCP and Court's Scheduling Order; continued work and search for expert witnesses; calls and emails to Marty Igo	1.50	0.00	DTK
Jul-09-2008	review file; prep for meeting with Marty Igo (expert witness); office conference with Mr. Igo to discuss expert qualifications and review transaction documents and related pleadings to assist in forming expert opinion	2.00	350.00	DTK
Jul-11-2008	Review settlement offer letter from opposing counsel; call and email to Kristine	0.30	52.50	DTK
Jul-14-2008	Search statutes and Idaho Real Estate Commission Rules and Guidelines regarding return of earnest money.	0.40	50.00	RWH
	Prepare draft of letter to opposing counsel regarding settlement.	1.60	0.00	RWH
	Leave message with attorney Larry Hunter at Moffett Thomas regarding expert witness J. Martin Igo.	0.10	12.50	RWH
Jul-15-2008	Call from opposing counsel; call to client re: settlement; revise letter to opposing counsel	0.50	87.50	DTK
	Work with Reid on expert disclosure and trial strategy	0.50	87.50	DTK
Jul-16-2008	Begin preparation of answers to Quasar's interrogatories, assemble documents responsive to requests for production.	2.20	275.00	RWH

Invoice #: 7879

Page 3

July 29, 2008

Jul-18-2008	Revise Expert Disclosure; call to client; call to expert (Marty Igo)	1.00	175.00	DTK
Jul-21-2008	Revise discovery responses; call to Kristine re: strategy going forward and potential settlement options	0.50	87.50	DTK
Jul-25-2008	Calls and emails to and from opposing counsel; review offer letter; email to client	0.40	70.00	DTK
Totals		24.80	\$3,160.00	

Total Fees & Disbursements

\$3,160.00

Transferred from Trust to General

\$0.00

Previous Balance

\$210.00

Previous Payments Since Last Bill

\$0.00

Balance Due Now

\$3,370.00

000037

Trout Jones Gledhill Fuhrman Gourley, P.A.

20-4944753

225 N 9th St., Ste. 820, PO Box 1097

Boise, ID 83701

Ph:(208) 331-1170

Fax:(208) 331-1529

Aug 28, 2008

Sunrise Development LLC

372 S. Eagle #155

Eagle, ID 83616

File #: 4232-001

Inv #: 8344

RE: Quasar Development, LLC

DATE	DESCRIPTION	HOURS	AMOUNT	LAWYER
Jul-28-2008	Calls and emails to and from Kristine and opposing counsel re: potential settlement terms; letter to opposing counsel	0.40	70.00	DTK
Aug-12-2008	Review settlement docs and pleadings; call expert	0.50	97.50	DTK
Aug-20-2008	Call to opposing counsel; calculate amounts due; call to expert (Marty Igo); revise settlement docs; call to client	0.70	136.50	DTK
	Totals	1.60	\$304.00	

DISBURSEMENTS

Disbursements

Receipts

Aug-27-2008 The Igo Company - Professional real estate services

300.00

Totals

\$300.00

\$0.00

000038

Total Fees & Disbursements	\$604.00
Transferred from Trust to General	\$0.00
Previous Balance	\$3,370.00
Previous Payments Since Last Bill	\$0.00
Balance Due Now	\$3,974.00

Trout Jones Gledhill Fuhrman Gourley, P.A.

20-4944753

225 N 9th St., Ste. 820, PO Box 1097

Boise, ID 83701

Ph:(208) 331-1170

Fax:(208) 331-1529

Sep 29, 2008

Sunrise Development LLC

372 S. Eagle #155

Eagle, ID 83616

File #: 4232-001

Inv #: 8561

RE: Quasar Development, LLC

DISBURSEMENTS

Disbursements

Receipts

Sep-12-2008 Recording Fee for Judgement (Gabrielle)

6.00

Certification Fee (Gabrielle)

2.00

Totals

\$8.00

\$0.00

Total Fees & Disbursements

\$8.00

Transferred from Trust to General

\$0.00

Previous Balance

\$3,974.00

Previous Payments Since Last Bill

\$0.00

Balance Due Now

\$3,982.00

000040

Trout Jones Gledhill Fuhrman Gourley, P.A.

20-4944753

225 N 9th St., Ste. 820, PO Box 1097

Boise, ID 83701

Ph: (208) 331-1170

Fax: (208) 331-1529

Dec 01, 2008

Sunrise Development LLC

372 S. Eagle #155

Eagle, ID 83616

File #: 4232-001

Inv #: 9444

RE: Quasar Development, LLC

DISBURSEMENTS

Disbursements

Receipts

Oct-28-2008 Certification Fee: Judgment [gc]

2.00

Recording Fee: Judgment (gc)

6.00

Totals

\$8.00

\$0.00

Total Fees & Disbursements

\$8.00

Transferred from Trust to General

\$0.00

Previous Balance

\$3,982.00

Previous Payments Since Last Bill

\$0.00

Balance Due Now

\$3,990.00

000041

Trout Jones Gledhill Fuhrman Gourley, P.A.

20-4944753

225 N 9th St., Ste. 820, PO Box 1097

Boise, ID 83701

Ph: (208) 331-1170

Fax: (208) 331-1529

Apr 29, 2009

Sunrise Development LLC

372 S. Eagle #155

Eagle, ID 83616

File #: 4232-001

Inv #: 11358

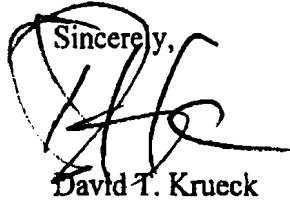
RE: Quasar Development, LLC

DATE	DESCRIPTION	HOURS	AMOUNT	LAWYER
Apr-01-2009	Meeting with K. Reynolds regarding case issues.	0.50	90.00	DLG
	Totals	0.50	\$90.00	

Total Fees & Disbursements	\$90.00
Transferred from Trust to General	\$0.00
Previous Balance	\$3,990.00
Previous Payments Since Last Bill	\$0.00
Balance Due Now	\$4,080.00

July 31, 2007
Page 2 of 2

YOUR IMMEDIATE ATTENTION IS SOLICITED.

Sincerely,

David T. Krueck

DTK/krl

cc: Client
Lauren Reynoldson (*via facsimile*)
Fax No. 388-1001

000043

Trout ♦ Jones ♦ Gledhill ♦ Fuhrman, P.A.
A T T O R N E Y S A T L A W

David T. Krueck

August 9, 2007

Via Facsimile 388-1001

Lauren Reynoldson
SPINK BUTLER, LLP
251 E Front St., Ste. 200
PO Box 639
Boise, ID 83701

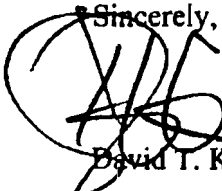
Re: Sunrise Development, LLC / Quasar Development LLC
Dunham Place Subdivision

Dear Ms. Reynoldson:

As we discussed earlier this week, Sunrise Development, LLC ("Sunrise") terminated the purchase and sale agreement with Quasar, LLC ("Quasar") for the Dunham Place Subdivision project after Quasar failed to file the final plat in accordance with the agreement. I sent a letter to you and Quasar on behalf of Sunrise on July 31, 2007 terminating the agreement and requesting a refund of the Earnest Money deposit in the amount of \$60,000.00 by close of business last Friday, August 3, 2007. The Earnest Money deposit has not been remitted to my office as of the date of this letter.

Quasar has defaulted under the terms of the parties' agreement. Sunrise has no other alternative than to demand that Quasar deliver a check made payable to Sunrise Development, LLC to my office by 5:00 p.m. this Friday, August 10, 2007. If I do not receive the check tomorrow, I have been authorized to file a Complaint against Quasar for breach of contract. In the event suit is filed, Sunrise will seek an award of its attorney's fees and costs pursuant to the terms of the parties' agreement.

YOUR IMMEDIATE ATTENTION IS SOLICITED.

Sincerely,

David T. Krueck

DTK/am

The 9th & Idaho Center ♦ 225 North 9th Street, Suite 820
P. O. Box 1097 ♦ Boise, Idaho 83701
Phone (208) 331-1170 ♦ Facsimile (208) 331-1529
E-Mail Address: dkrueck@idalaw.com

EXHIBIT
000044

Trout ♦ Jones ♦ Gledhill ♦ Fuhrman, P.A.
A T T O R N E Y S A T L A W

David T. Krueck

August 14, 2007

VIA FACSIMILE AND U.S. MAIL
FAX NO. 288-1516

Amanda Alvaro
Quasar Development LLC
3090 Gentry Way #150
Meridian, ID 83642

Re: Sunrise Development, LLC / Quasar Development LLC
Dunham Place Subdivision

Dear Ms. Alvaro:

I write to you as the attorney for Sunrise Development, LLC ("Sunrise") regarding the Real Estate Purchase Agreement ("Agreement") Quasar Development, LLC ("Quasar") entered into with Sunrise in the summer of 2006. I sent a letter to Quasar on behalf of Sunrise on July 31, 2007, terminating the Agreement pursuant to the terms of Section 7(a) of the Agreement, and requested a refund of the \$60,000.00 Earnest Money. On August 9, 2007, I sent a letter on behalf of Sunrise to legal counsel for Quasar demanding a refund of the Earnest Money. Neither I nor Sunrise has received any response from Quasar to these correspondences. Consequently, Sunrise hereby formally holds Quasar in default of the Agreement.

Section 15(l) of the Agreement provides that time is of the essence for the performance of any act required by the parties, which would certainly include the refund of the Earnest Money contained in Section 7(a). Quasar has been given two weeks to refund the Earnest Money, but has taken no action to fulfill this contractual obligation. Therefore, pursuant to Section 10(b) of the Agreement, Sunrise has the right to hold Quasar in breach of the Agreement and seek all damages resulting from such breach. In addition, Sunrise is entitled to a full refund of the Earnest Money. Sunrise also has the right to seek full reimbursement for all attorney's fees and costs incurred with respect to this transaction and all fees and costs incurred in pursuing Quasar for breaching the Agreement.

The 9th & Idaho Center ♦ 225 North 9th Street, Suite 820
P. O. Box 1097 ♦ Boise, Idaho 83701
Phone (208) 331-1170 ♦ Facsimile (208) 331-1529
E-Mail Address: dkrueck@idalaw.com

FI

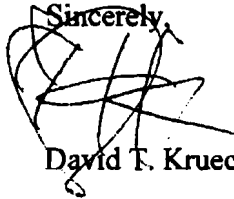
**EXHIBIT
D**

000015

September 7, 2007
Page 2 of 2

If Quasar fails to deliver the fully executed Promissory Note to my office by close of business today, I have been directed to file suit on Monday, September 10, 2007 for breach of the Purchase Agreement. Sunrise will seek multiple remedies against Quasar under the terms of Section 10(b) of the Purchase Agreement, including a return of the Earnest Money and damages Sunrise has incurred as a result of Quasar's breach. In addition, Sunrise will seek recovery of its attorney's fees and costs pursuant to Section 15(k) of the Purchase Agreement.

Your immediate attention is solicited.

Sincerely,

David T. Krueck

DTK/pg

000046

SPINK BUTLER

ATTORNEYS AT LAW

LLP

Richard H. Andrus
JoAnn C. Butler
T. Hethe Clark
Lauren Malers Reynoldson
Michael T. Spink

(208) 388-1092
mspink@sb-attorneys.com

September 6, 2007

Via E-Mail

David T. Krueck
Trout Jones Gledhill Fuhrman, P.A.
P.O. Box 1097
Boise, ID 83701

RE: Quasar Development LLC/Sunrise Development LLC
SB File No. 22344.12

Dear Dave:

Attached please find a proposed Mutual Release and Settlement Agreement form which I would ask you to have your client execute upon delivery of the Promissory Note. I am attaching an unexecuted copy of the Promissory Note as Exhibit A. Please let me know if you have any objection to the language. The intent of this document is that the only claim surviving this arrangement between the parties would be performance of the Promissory Note requiring payment of the \$60,000.00 fee by September 17, 2007. If changes to the document are necessary, I will be reachable by my secretary by late morning on Friday.

Very truly yours,

Dictated by Michael T.
Spink, and delivered without
signature to avoid delay.

Michael T. Spink

MTS:lrc
Enclosure

c: Amanda Alvaro (*via e-mail*)
Richard W. McGraw (*via e-mail*)
Bradley M. Minasian (*via e-mail*)

251 E. FRONT STREET
SUITE 200
P.O. Box 639
BOISE, IDAHO 83701

208-388-1000
208-388-1001 (F)
WWW.SB-ATTORNEYS.COM

EXHIBIT
E
000047

MUTUAL RELEASE AND SETTLEMENT AGREEMENT

THIS MUTUAL RELEASE AND SETTLEMENT AGREEMENT ("**Agreement**"), by and between Quasar Development LLC, an Idaho limited liability company (hereinafter "**Quasar**"), and Sunrise Development LLC, an Idaho limited liability company (hereinafter "**Sunrise**"), (hereinafter collectively the "**Parties**") is intended to effect the extinguishment of obligations herein designated.

RECITALS

Disputes and differences have arisen between Quasar and Sunrise with respect to that certain Real Estate Purchase Agreement ("**Purchase Agreement**") dated July 21, 2006 for Quasar to sell, and Sunrise to purchase, certain real property located at 110 S. Cloverdale Road, Boise, Ada County, Idaho ("**Dunham Place Subdivision**"). By this Agreement, the Parties, for themselves, their successors, heirs, assigns, servants, employees, representatives and insureds, together with any and all persons acted before, by or through them, or any one of them, individually, collectively and severally release each other from all claims, liabilities, demands, contracts and/or agreements and/or alleged contractual relationships, costs, expenses, promises, damages, representations, actions and causes of action, and judgments of every kind, in any manner whatsoever resulting, or to result, from or connected with or arising out of the contracts and business relationship described above.

It is further agreed by the Parties that this Agreement is a general release. The Parties each agree to assume the risk of any and all claims for damages which may exist as of this date, or which may arise or become known in the future, even if any such claim, if known, would materially affect the Parties' respective decision to enter into this Agreement. Sunrise further agrees that it accepts the consideration set forth herein as a complete compromise of the matters involving disputed issues of law and fact, and fully assumes the risk that the facts or loss may be otherwise than it believes them to be.

The Parties have agreed to execute this Agreement in settlement of their dispute.

RELEASE

1. In consideration of the mutual relinquishment of their respective legal rights with respect to the Purchase Agreement, and in consideration of the execution of this Agreement and the Promissory Note attached hereto as **Exhibit A**, each party, for itself and its heirs, legal representatives, successors, assigns and affiliates, does hereby expressly release the other and its heirs, legal representatives, successors, assigns and affiliates from any and all claims, demands, damages, actions or right of action of whatever kind or nature, known or unknown, which they now have or may in the future claim, having to do or arising out of the contracts and business relationship described above.

2. Each party further covenants, in consideration of the mutual promises contained herein, that it will make no assignment of any putative right, claim or cause of action to any third party arising out of the circumstances referenced herein, and hereby acknowledges that the other party would suffer irreparable harm by virtue of any such assignment.

3. In the event a party must take action to enforce its rights under this Agreement, the prevailing party in any resulting litigation shall be entitled to recover reasonable costs and attorney fees incurred in connection therewith.

4. It is understood and agreed that this settlement is the compromise of a doubtful and disputed claim, and that payment made is not to be construed as an admission of liability on the part of the Parties hereby released, and that each denies liability therefore, and intends merely to avoid litigation and to buy its peace.

5. The Parties acknowledge that after entering into this Agreement, they may discover different and/or additional facts concerning the subject matter of this Agreement or their understanding of the facts. The Parties expressly assume the risk of such facts being so different, and agree that this

Agreement shall in all respects be effective and not subject to rescission, cancellation or termination by reason of such different and/or additional facts. The Parties understand and acknowledge that the only right between them surviving the execution of this Agreement shall be the right of Sunrise to payment in full of the obligation reflected on Exhibit A attached hereto.

6. The Parties, and each of them hereby, acknowledge that they have been represented by counsel, and have made independent investigations and inquiries deemed necessary or appropriate in connection with the subject matter of this Agreement prior to the execution hereof.

DATED this ____ day of September, 2007.

QUASAR:

QUASAR DEVELOPMENT LLC,
an Idaho limited liability company

By: McGraw & Co., Inc.,
an Idaho corporation
Its: Managing Member

By: Richard W. McGraw
Its: President

By: A. Alvaro Real Estate, Inc.,
an Idaho corporation
Its: Managing Member

By: Amanda Alvaro
Its: President

By: Mirlyn, Inc.,
an Idaho corporation
Its: Managing Member

By: Bradley M. Minasian
Its: President

SUNRISE:

Sunrise Development LLC,
an Idaho limited liability company

By: Sandra Kristine Reynolds
Its: Managing Member

Exhibit A
PROMISSORY NOTE

Maker: Quasar Development LLC,
an Idaho limited liability company

Effective Date: August 17, 2007

Place of Making: Boise, Idaho

Principal Amount: \$60,000.00

Interest Rate: 8% per annum

Maturity Date: September 17, 2007

1. **Terms.** The undersigned (herein "**Maker**"), for value received, jointly and severally promise to pay to the order of Sunrise Development LLC, an Idaho limited liability company (herein "**Payee**" or "**Holder**"), at 372 S. Eagle Road, Suite 155, Eagle, Idaho 83616, or such other place or places as may be designated by Holder, the principal sum of Sixty Thousand and No/100 Dollars (\$60,000.00) in lawful currency of the United States of America, together with interest thereon as provided hereunder, which such principal and interest shall be payable as follows:

1.1 The principal balance and all accrued but unpaid interest, if any, shall be due and payable in full without demand on September 17, 2007 (the "**Maturity Date**"); and

1.2 The unpaid principal amount hereof from time to time outstanding shall bear interest from and after the Date of Making at the rate of eight percent (8%) per annum. After the Maturity Date, acceleration or default, the total unpaid indebtedness hereunder shall bear interest at the lesser rate of twelve percent (12%) per annum, or until paid or until the default is otherwise cured. All payments hereunder shall be applied first to fees, charges, including late charges, attorney fees and costs, if any, then to interest and then to principal. Interest shall be computed on the basis of a three hundred sixty (360) day year, and charged for the actual number of days elapsed.

2. **Prepayment.** Maker shall have the right of prepayment without penalty.

3. **Immediately Available Funds.** All payments made under this Promissory Note, whether on account of the principal sum or interest, if any, shall be made in immediately available funds without setoff or counterclaim and free and clear of and without deduction for or on account of all present and future fees, deductions, withholdings, restrictions or conditions of whatsoever nature, if any, now or hereafter imposed, levied, calculated, withheld or assessed. "**Immediately available funds**" shall mean funds tendered without conditions or restrictions on release and in a medium which is subject to immediate deposit and/or credit without confirmation, clearance period, waiting or other delay for or restriction on immediate use, or negotiation. Acceptance of any payment made otherwise than in immediately available funds shall not constitute a waiver of the right to require payment in immediately available funds.

4. **Default.** In the event of default hereunder, Holder shall be entitled to all remedies available under Idaho law, including recovery of attorney fees and costs as provided below.

5. **Modifications.** The undersigned agree that the Holder hereof may extend the time of payment or otherwise modify the terms of payment of any part or the whole of the indebtedness evidenced hereby or release and/or subordinate any security for this Promissory Note at any time at the request of anyone now or hereafter liable, and such consent shall not alter nor diminish the liability of any

person or the enforceability of this Promissory Note. Each and every party now or hereafter signing or endorsing this Promissory Note binds such party as a principal, and not as a surety. All of the terms, covenants, provisions and conditions herein contained are made on behalf of, and shall apply to and bind, the undersigned and their respective personal representatives, successors and assigns, jointly and severally.

6. Attorney Fees. The undersigned agree that if any installment of principal and/or interest or any other amount due under this Promissory Note or any other instrument relating to or securing this Promissory Note is not paid on the applicable payment or Maturity Date, then the undersigned shall pay to Holder all costs, including, without limitation, attorney fees, expenses, penalties and other damages incurred by Holder as a result of such late payment or failure to pay as provided herein.

7. Applicable Law. This Promissory Note shall be governed by the laws of the State of Idaho.

EXECUTED effective as of the Date of Making set forth above.

MAKER:

QUASAR DEVELOPMENT LLC,
an Idaho limited liability company

By: McGraw & Co., Inc.,
an Idaho corporation
Its: Managing Member

By: Richard W. McGraw
Its: President

By: A. Alvaro Real Estate, Inc.,
an Idaho corporation
Its: Managing Member

By: Amanda Alvaro
Its: President

By: Mirlyn, Inc.,
an Idaho corporation
Its: Managing Member

By: Bradley M. Minasian
Its: President

COPY

SEP 25 2007

David T. Krueck, ISB No. 6246
TROUT ♦ JONES ♦ GLEDHILL ♦ FUHRMAN, P.A.
The 9th & Idaho Center
225 North 9th Street, Suite 820
P.O. Box 1097
Boise, ID 83701
Telephone: (208) 331-1170
Facsimile: (208) 331-1529

J. DAVID NAVARRO, Clerk
By M. STROMER
DEPUTY

Attorneys for Plaintiff Sunrise Development, LLC

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

SUNRISE DEVELOPMENT, LLC, an Idaho)
limited liability company,)
)
Plaintiff,)
vs.)
)
QUASAR DEVELOPMENT, LLC, an Idaho)
limited liability company)
)
Defendant.)

Case No.: **CV 0C 0717098**
COMPLAINT AND DEMAND FOR JURY
TRIAL

COMES NOW Sunrise Development, LLC ("Sunrise" or "Plaintiff") by and
through its attorneys of record, TROUT ♦ JONES ♦ GLEDHILL ♦ FUHRMAN, P.A.,
and hereby alleges and complains against the above named Defendant as follows:

I.
PARTIES AND VENUE

1. The Plaintiff is an Idaho limited liability company in good standing with its principal place of business located in Boise, Ada County, Idaho.
2. The Defendant Quasar Development, LLC ("Quasar" or "Defendant") is an Idaho limited liability company in good standing with its principal place of business located in Meridian, Ada County, Idaho.

EXHIBIT
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3. This Court has subject matter jurisdiction over this action pursuant to Idaho Code § 1-705.

4. This Court has personal jurisdiction over the Defendant pursuant to Idaho Code § 5-514.

5. Venue is proper in the Fourth Judicial District in and for the County of Ada, pursuant to Idaho Code § 5-404.

II. GENERAL ALLEGATIONS

6. Plaintiff hereby realleges paragraphs 1 through 5 above and incorporates the same by reference as though fully set forth herein.

7. On or about July 21, 2006, the parties entered into a Real Estate Purchase Agreement ("Agreement") whereby the Plaintiff agreed to purchase real property located in Ada County, Idaho from the Defendant under certain terms and conditions. Attached hereto as Exhibit 'A,' and fully incorporated herein by this reference, is a true and correct copy of the Agreement.

8. Pursuant to the terms of the Agreement, the Plaintiff deposited \$60,000.00 as Earnest Money to be applied toward the purchase price for the real property in the event the parties closed the transaction under the terms of the Agreement.

9. Section 7(a) of the Agreement specifically provides that in the event the Defendant failed to record the final plat for the Dunham Place Subdivision ("Subdivision") by July 31, 2007, the Plaintiff has the right to terminate the Agreement and seek a full refund of the Earnest Money.

10. The Defendant failed to record the final plat for the Subdivision by July 31, 2007. Based upon information and belief, the Defendant has not recorded the final plat for the Subdivision as of the date of this Complaint.

11. On July 31, 2007, the Plaintiff provided written notice to the Defendant that the Plaintiff terminated the Agreement due to the Defendant's failure to record the final plat for the Subdivision pursuant to Section 7(a) of the Agreement and demanded a refund of the Earnest Money.

12. The Plaintiff has made various demands to the Defendant for the return of the Earnest Money pursuant to the Agreement. Despite numerous promises to pay, the Defendant has failed and refused to pay the Earnest Money owed to the Plaintiff.

**III.
FIRST CAUSE OF ACTION
(Breach of Contract)**

13. Plaintiff re-alleges the allegations set forth in paragraphs 1 through 12 above and incorporates the same by reference as though fully set forth herein.

14. The Plaintiff provided written notice of its election to terminate the Agreement to the Defendant under the terms of Section 7(a) of the Agreement and receive a full refund of the Earnest Money on July 31, 2007.

15. The Plaintiff performed all of its duties and obligations under the terms of the Agreement.

16. The Defendant is obligated under the terms of the Agreement to fully refund the Earnest Money deposit to the Plaintiff.

17. The Defendant has breached the Agreement by failing to refund the Earnest Money to the Plaintiff after the Plaintiff terminated the Agreement.

18. Pursuant to provision 15(1), time is of the essence in this contract. The Defendant has not timely performed its obligation to refund the Earnest Money to the Plaintiff after the Plaintiff made its written demand to the Defendant for a refund of said Earnest Money.

19. As a direct and proximate result of the Defendant's material breach of the Agreement, the Plaintiff has been damaged in an amount to be proven at trial, including but not limited to, the amount of the Earnest Money deposit and other incidental and consequential damages, and such amount exceeds the jurisdictional limits of this Court.

**IV.
SECOND CAUSE OF ACTION
(Breach of the Covenant of Good Faith and Fair Dealing)**

20. Plaintiff re-alleges the allegations set forth in paragraphs 1 through 19 above and incorporates the same by reference as though fully set forth herein.

21. Implied into every contract as a matter of law is a covenant of good faith and fair dealing.

22. Defendant has a duty to perform its obligations under the Agreement fairly and in good faith.

23. Defendant has breached the implied covenant of good faith and fair dealing in its dealings with the Plaintiff under the terms of the Agreement.

24. As a direct and proximate result of the Defendant's material breach of the Agreement, the Plaintiff has been damaged in an amount to be proven at trial, including but not limited to, the amount of the Earnest Money deposit and other incidental and consequential damages, and such amount exceeds the jurisdictional limits of this Court.

V.
ATTORNEY'S FEES AND INTEREST

25. Plaintiff re-alleges the allegations set forth in paragraphs 1 through 24 above and incorporates the same by reference as though fully set forth herein.

26. The Plaintiff has been required to retain the services of the law firm of Trout Jones Gledhill Fuhrman, P.A. to represent and prosecute its interest in this matter. The Plaintiff is entitled to an award of attorney's fees against the Defendant under the terms of the Agreement and Idaho Code §§ 12-120(3) and 12-121, and Idaho Rule of Civil Procedure 54. A reasonable amount of attorney's fees is \$3,000.00 in the event a default judgment is rendered against the Defendant. The Plaintiff is also entitled to an award of prejudgment interest at the maximum rate allowed by law.

DEMAND FOR JURY TRIAL

Plaintiff demands a jury trial on all issues pursuant to Idaho Rule of Civil Procedure 38(b).

WHEREFORE, Plaintiff prays for relief as follows:

- A. For a judgment for damages against Defendant on Plaintiff's Breach of Contract claim in an amount to be proven at trial;
- B. For a judgment against Defendant on Plaintiff's claim for Breach of the Covenant of Good Faith and Fair Dealing in an amount to be proven at trial;
- C. That Defendants be ordered to pay the Plaintiff's attorneys' fees and costs pursuant to provision 10(b) of the Agreement, I.C. §§ 12-120, 12-121, and Idaho Rule of Civil Procedure 54(d), for which \$3,000.00 is a reasonable amount of attorneys' fees in the event that a default judgment is rendered against the Defendant; and

D. For such other and further relief as this Court deems just and proper in these premises.

DATED this 25th day of September, 2007.

TROUT ♦ JONES ♦ GLEDHILL ♦ FUHRMAN, P.A.



David T. Krueck

NO. _____
 A.M. _____ P.M. _____

OCT 25 2007

J. DAVID NAVARRO, Clerk
 By A TOONE
 DEPUTY

Michael T. Spink, ISB No. 2201
 Richard H. Andrus, ISB No. 7171
 SPINK BUTLER, LLP
 251 E. Front Street, Suite 200
 P. O. Box 639
 Boise, Idaho 83701
 Telephone: 208/388-1000
 Facsimile: 208/388-1001
 #22344.12

Attorneys for Defendant Quasar Development LLC

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE
 STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

SUNRISE DEVELOPMENT LLC, an Idaho)
 limited liability company,)

Plaintiff,)

vs.)

QUASAR DEVELOPMENT LLC, an Idaho)
 limited liability company)

Defendant.)

Case No. CV OC 0717098

ANSWER

Defendant Quasar Development LLC ("Defendant"), by and through its undersigned counsel of record the law firm of Spink Butler, LLP, in answer to Plaintiff's Complaint and Demand for Jury Trial (the "Complaint"), affirms and alleges as follows:

FIRST DEFENSE

1. Plaintiff's Complaint fails to state a claim upon which relief can be granted.

SECOND DEFENSE

2. Defendant denies each and every allegation not specifically admitted herein.

3. Defendant is without personal knowledge or sufficient information to admit the allegations of Paragraph 1, but upon information and belief will admit that Sunrise Development LLC ("Plaintiff") is an Idaho limited liability company.

4. Defendant admits that Quasar Development LLC is an Idaho limited liability company doing business in Ada County, Idaho. Defendant denies all other allegations contained in Paragraph 2.

5. Defendant admits the allegations contained Paragraphs 3, 4, and 5.

6. Defendant hereby incorporates its responses to each respective paragraph referenced in Paragraph 6.

7. Defendant admits that on or about July 21, 2006 Plaintiff and Defendant entered into a certain Real Estate Purchase Agreement (the "Agreement") whereby Plaintiff agreed to purchase real property (the "Property") located in Ada County, Idaho from Defendant under certain terms and conditions. Defendant denies all other allegations contained in Paragraph 7.

8. Defendant admits the allegations contained in Paragraph 8.

9. Section 7(a) of the Agreement speaks for itself. Paragraph 9 also contains legal conclusions for which no response is required. To the extent a response is required for Paragraph 9, Defendant denies all other allegations contained therein.

10. Defendant admits that when Plaintiff requested termination of the Agreement, Defendant halted efforts to record the final plat of the Property in order to mitigate the damages caused by Plaintiff's termination. Defendant admits it has not yet recorded a final plat. Defendant denies all other allegations contained in Paragraph 10.

11. Defendant admits that counsel for Plaintiff sent a letter to Defendant on July 31, 2007 seeking to terminate the Agreement and demanding release of \$60,000.00 in Earnest

Money by alleging Section 7(a) of the Agreement allowed for a full refund. Defendant denies all other allegations contained in Paragraph 11.

12. Defendant admits Plaintiff has requested a return of all Earnest Money, and that Plaintiff and Defendant have had ongoing discussions on how to resolve the matter. Defendant denies all other allegations contained in Paragraph 12.

13. Defendant hereby incorporates its responses to each respective paragraph referenced in Paragraph 13.

14. Defendant admits that counsel for Plaintiff sent a letter to Defendant on July 31, 2007 seeking to terminate the Agreement and demanding release of \$60,000.00 in Earnest Money by alleging Section 7(a) of the Agreement allowed for a full refund. Defendant denies all other allegations contained in Paragraph 14.

15. Paragraph 15 contains a legal conclusion for which no response is required. To the extent a response is required, Defendant denies the allegations contained in Paragraph 15.

16. Defendant denies the allegations contained in Paragraph 16 and 17.

17. Section 15(l) of the Agreement speaks for itself. Defendant denies all other allegations contained in Paragraph 18.

18. Paragraph 19 contains legal conclusions for which no response is required. To the extent a response is required, Defendant denies the allegations contained in Paragraph 19.

19. Defendant hereby incorporates its responses to each respective paragraph referenced in Paragraph 20.

20. Paragraphs 21, 22, 23, and 24 contain legal conclusions for which no response is required. To the extent a response is required, Defendant denies the allegations contained in Paragraphs 21, 22, 23, and 24.

21. Defendant hereby incorporates its responses to each respective paragraph referenced in Paragraph 25.

22. Defendant admits that Plaintiff has retained the services of the law firm of Trout Jones Gledhill Fuhrman, P.A. Paragraph 26 contains legal conclusions for which no response is required. To the extent a response is required, Defendant denies the allegations contained in Paragraph 26.

AFFIRMATIVE DEFENSES

The claims put forth by Plaintiff are barred by the waiver, laches, estoppel, unclean hands, and the statute of frauds.

ADDITIONAL AFFIRMATIVE DEFENSES

Defendant reserves the right to amend this Answer and to include additional affirmative defenses as they are revealed through the discovery process.

ATTORNEY'S FEES

Defendant has been required to retain the services of Spink Butler, LLP to defend this action, and is entitled to recover reasonable costs and attorney's fees.

DATED this 25th day of October, 2007.

SPINK BUTLER, LLP

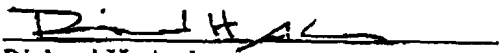
By: Richard H. Andrus
Richard H. Andrus
Attorneys for Defendant Quasar
Development LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 25th day of October, 2007, I caused a true and correct copy of the above ANSWER to be served upon the following individuals in the manner indicated below:

David T. Krueck
Trout Jones Gledhill Fuhrman, P.A.
P. O. Box 1097
Boise, ID 83701
Facsimile: 208/331-1529

☒ U.S. Mail
☐ Hand-Delivery
☐ Federal Express
☒ Via Facsimile
☐ Via Process Server


Richard H. Andrus

DAVID KRUECK, ISB No. 6246
BURT R. WILLIE, ISB No. 7720
TROUT JONES GLEDHILL FUHRMAN, P.A.
225 North 9th Street, Suite 820
PO Box 1097
Boise, Idaho 83701
Telephone: (208) 331-1170
Facsimile: (208) 331-1529

NOV 14 2007
AM 10:00 PM

DEC 04 2007

J. DAVID NAVARRO, Clerk
By KATHY J. SEHL
DEPUTY

Attorneys for Plaintiff Sunrise Development, LLC

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

SUNRISE DEVELOPMENT, LLC., an Idaho)
limited liability company,)

Plaintiff,)

v.)

QUASAR DEVELOPMENT, LLC, and Idaho)
limited liability company,)

Defendants.)

Case No. CV OC 0717098

**AFFIDAVIT OF KRISTINE
REYNOLDS IN SUPPORT OF
MOTION FOR SUMMARY
JUDGMENT**

STATE OF IDAHO)
) ss.
County of Ada)

KRISTINE REYNOLDS, being first duly sworn upon oath, deposes and states the
following:

1. I am at least eighteen (18) years of age and am competent to testify regarding
the matters set forth herein.
2. I am one of the members of Sunrise Development, LLC ("Sunrise") and have
personal knowledge of the matters stated in this Affidavit.

3. That on or about July 21, 2006, Sunrise entered into a Real Estate Purchase Agreement ("Agreement") with Quasar Development, LLC ("Quasar") whereby Sunrise agreed to purchase real property located in Ada County, Idaho from Quasar under certain terms and conditions. Attached hereto as Exhibit 'A,' and fully incorporated herein by this reference, is a true and correct copy of the Agreement.

4. Pursuant to Section 2(a) of the Agreement, Sunrise paid Quasar \$60,000.00 as Earnest Money to be applied toward the purchase price of the real property in the event the parties closed the transaction under the terms of the Agreement.

5. Section 7(a) of the Agreement specifically provides that "[t]he First Closing Date shall occur no later than July 31, 2007. In the event Seller [Quasar] fails to record the final plat of the Subdivision with the Ada County Recorder's Office by July 31, 2007, Buyer [Sunrise] may, at its sole discretion terminate this Agreement upon written notice to Seller, and Buyer may then obtain a full refund of the Earnest Money without further obligation under the terms of this Agreement."


6. Quasar failed to record the final plat for the Dunham Place Subdivision ("Subdivision") by July 31, 2007.

7. That on July 31, 2007, legal counsel for Sunrise provided written notice to Quasar that Sunrise terminated the Agreement based on the Defendant's failure to record the final plat for the Subdivision pursuant to Section 7(a) of the Agreement and demanded a full refund of the Earnest Money.

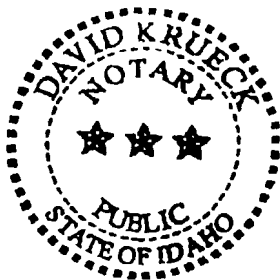
8. Sunrise has made numerous written demands to Quasar seeking a refund of the Earnest Money pursuant to the express terms of the Agreement.


9. Quasar has failed to refund the Earnest Money to Sunrise.

FURTHER YOUR AFFIANT SAYETH NAUGHT.


KRISTINE REYNOLDS

SUBSCRIBED AND SWORN to before me this 3rd day of December, 2007.



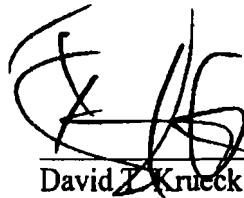

Notary Public for Idaho
Residing at Meridian, Idaho
Commission expires: 9/5/2012

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 4th day of December, 2007 I caused to be served a true copy of the foregoing by the method indicated below, and addressed to the following:

Richard Andrus
SPINK BUTLER, LLP
251 E Front St., Ste. 200
PO BOX 639
Boise, ID 83701

- | | |
|-------------------------------------|---------------------|
| <input type="checkbox"/> | Hand Delivered |
| <input checked="" type="checkbox"/> | U.S. Mail |
| <input type="checkbox"/> | Facsimile: 388-1001 |
| <input type="checkbox"/> | Overnight Mail |



David Z. Krueck

COPY
NO. _____
FILED _____
AM. _____ P.M. _____
SEP 10 2008
J. DAVID NAVARRO, Clerk
By JANIE KOPPELMAN
DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

SUNRISE DEVELOPMENT LLC, an)	
Idaho limited liability company,)	
)	Case No. CV OC 0717098
Plaintiff,)	
)	
vs.)	JUDGMENT
)	
QUASAR DEVELOPMENT LLC, an)	
Idaho limited liability company)	
)	
Defendant.)	

This matter having come before the Court upon the parties' Stipulation for Entry of Judgment and the Covenant Not to Execute, and good cause appearing therefore;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

1. That Plaintiff is awarded judgment against Defendant in the amount of Sixty Thousand and No/100 (\$60,000.00), plus Plaintiff's costs in the amount of Four Hundred Fifty-Seven and 31/100 Dollars (\$457.31), plus Plaintiff's attorney fees in the amount of Ten Thousand Thirty-One and 50/100 Dollars (\$10,031.50), for a total judgment in the amount of

Seventy Thousand Four Hundred Eighty-Eight and 81/100 Dollars (\$70,488.81), with interest accruing at the judgment rate.

It is hereby ordered, adjudged, and decreed this 4 day of September, 2008.

DARLA S. WILLIAMSON

Darla A. Williamson
District Judge

CLERK'S CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 10 day of September, 2008, I caused a true and correct copy of the above JUDGMENT to be served upon the following individuals in the manner indicated below:

Michael T. Spink
Richard H. Andrus
Spink Butler, LLP
251 E. Front Street, Suite 200
Boise, ID 83702
P.O. Box 639
Boise, ID 83701
Facsimile: 208/388-1001

☒ U.S. Mail
☐ Hand-Delivery
☐ Federal Express
☐ Via Facsimile

David T. Krueck
Reid W. Hay
Trout-Jones-Gledhill-Fuhrman, P.A.
225 N. 9th Street, Suite 820
Boise, ID 83702
P.O. Box 1097
Boise, ID 83701
Facsimile: 208/331-1529

☒ U.S. Mail
☐ Hand-Delivery
☐ Federal Express
☐ Via Facsimile

JANINE KORSEW

Deputy Clerk

SEAL

FILED 4:30
A.M. P.M.

DEC 14 2010

J. DAVID NAVARRO, Clerk
By J. RANDALL
DEPUTY

Craig L. Meadows, ISB No. 1081
Michelle R. Points, ISB No. 6224
HAWLEY TROXELL ENNIS & HAWLEY LLP
877 Main Street, Suite 1000
P.O. Box 1617
Boise, ID 83701-1617
Telephone: 208.344.6000
Facsimile: 208.954.5252
Email: cmeadows@hawleytroxell.com
mpoints@hawleytroxell.com

Attorneys for Defendants Trout Jones Gledhill Fuhrman
P.A. and David T. Krueck

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

JUSTIN S. REYNOLDS and S. KRISTINE
REYNOLDS; and SUNRISE
DEVELOPMENT, LLC,

Plaintiffs,

vs.

TROUT JONES GLEDHILL FUHRMAN,
P.A.; and DAVID T. KRUECK, individually
and in his capacity as a member of the
Defendant Law Firm,

Defendants.

Case No. CV OC 1004458

AFFIDAVIT OF DAVID T. KRUECK IN
SUPPORT OF DEFENDANTS' MOTION
FOR SUMMARY JUDGMENT

DAVID T. KRUECK, being first duly sworn upon oath, deposes and states as follows.

1. I am a Defendant in the above-entitled action. I have personal knowledge of the facts set forth herein and can testify as to the truth of the matters contained herein if called upon as a witness at the trial of this action.

AFFIDAVIT OF DAVID T. KRUECK IN SUPPORT OF DEFENDANTS'
MOTION FOR SUMMARY JUDGMENT - 1

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2. I am a member of the law firm of Trout Jones Gledhill Fuhrman, P.A. and have knowledge of the facts set forth herein and can testify as to the truth of the matters contained herein if called upon as a witness at the trial of this action.

3. I represented Justin and Kristine Reynolds and Sunrise Development, LLC (collectively "Reynolds") in a transaction wherein they wished to purchase certain real property located in Ada County, Idaho, commonly known as the Dunham Place Subdivision ("the Property") from Quasar Development, LLC ("Quasar").

4. On or about July 21, 2006, Reynolds and the principals of Quasar entered into a Real Estate Purchase Agreement ("Agreement") whereby Reynolds agreed to purchase the Property from Quasar under certain terms and conditions. Attached as Exhibit A is a true and correct copy of the Agreement.

5. Pursuant to the terms of the Agreement, Reynolds deposited \$60,000 as earnest money, to be applied toward the purchase price for the Property, in the event the parties closed the transaction under the terms of the Agreement. It was always understood that the \$60,000 in earnest money paid by Reynolds was going to be used by Quasar for costs incurred in getting the Property through the platting process.

6. Section 7(a) of the Agreement provided that in the event Quasar failed to record the final plat for the Property by July 31, 2007, Reynolds had the right to terminate the Agreement and seek a full refund of the earnest money.

7. Quasar failed to record the plat for the Property by July 31, 2007. On that same date, I provided written notice to counsel for Quasar that Reynolds terminated the Agreement due to Quasar's failure to record the plat pursuant to the terms of the Agreement, and also demanded a full refund of the \$60,000 paid in earnest money. Attached as Exhibit B is a true

and correct copy of my July 31, 2007 letter to counsel for Quasar. In response to this demand, Quasar did not refund Reynolds the \$60,000 earnest money.

8. On August 9, 2007 on behalf of Reynolds, I sent a letter to counsel for Quasar again demanding return of Reynolds' earnest money. Attached as Exhibit C is a true and correct copy of my August 9, 2007 letter to counsel for Quasar. In response to this demand, Quasar did not refund Reynolds the \$60,000 earnest money.

9. On August 14, 2007, after receiving no response from Quasar or counsel, I sent another demand for full refund of Reynolds' earnest money. Attached as Exhibit D is a true and correct copy of my August 14, 2007 letter to counsel for Quasar. In response to this demand, Quasar did not refund Reynolds the \$60,000 earnest money.

10. On September 6, 2007, I received a letter from counsel for Quasar, along with a proposed promissory note and release agreement, which proposed promissory note provided that Quasar would pay Reynolds, or Sunrise Development, LLC, \$60,000 no later than September 17, 2007. The parties could not reach a resolution regarding the terms of the proposed promissory note and release agreement, and no payment was ever made by Quasar. Attached as Exhibit E is a true and correct copy of the September 6, 2007 letter from Quasar's counsel, with enclosures.

11. Quasar never represented that they didn't owe Reynolds a portion of the earnest money, it was always presented to me that they didn't believe the full amount was due, and that they were having financial difficulties and needed more time to come up with the money for a refund. Because they didn't pay anything to Reynolds, it was decided to proceed with litigation to collect the earnest money.

12. On September 25, 2007, I filed on behalf of Reynolds, a Complaint and Demand for Jury Trial as Sunrise Development, LLC v. Quasar Development, LLC, Ada County Case

No. CV OC 0717098 (the "Underlying Litigation"). Attached as Exhibit F is a true and correct copy of the Complaint and Demand for Jury Trial.

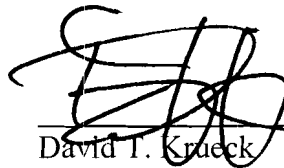
13. On October 25, 2007, Quasar filed its Answer in the Underlying Litigation. Attached as Exhibit G is a true and correct copy of the Answer.

14. On December 4, 2007, Reynolds filed a motion for summary judgment in the Underlying Litigation. On that same date, the Affidavit of Kristine Reynolds in Support of Motion for Summary Judgment was filed. Attached as Exhibit H is a true and correct copy of Mrs. Reynolds' Affidavit. The Reynolds prevailed on their motion for summary judgment to the extent the District Court found that the full \$60,000 should be refunded to Reynolds.

15. In August of 2008, Quasar stipulated to the entry of a Judgment against it (subject to a covenant not to execute) for the full refund amount of \$60,000, in addition to attorney fees and costs incurred by Reynolds, for a total amount of \$70,488.81. Attached as Exhibit I is a true and correct copy of the Judgment which was entered September 10, 2008.

16. Attached as Exhibit J are true and correct copies of invoices sent by Trout Jones Gledhill Fuhrman P.A. to Reynolds following Reynolds and Quasar's execution of the Agreement in July of 2006.

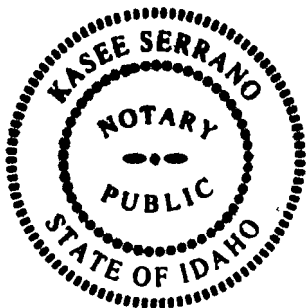
Further, your affiant sayeth naught.



David T. Krueck

STATE OF IDAHO)
) ss.
County of Ada)

SUBSCRIBED AND SWORN before me this 10th day of December, 2010.



K Serrano
Name: Kasee Serrano
Notary Public for Idaho
Residing at Boise, ID
My commission expires 01-20-2016

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 14th day of December, 2010, I caused to be served a true copy of the foregoing AFFIDAVIT OF DAVID T. KRUECK IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT by the method indicated below, and addressed to each of the following:

Robert C. Huntley
The HUNTLEY LAW FIRM PLLC
815 W. Washington Street
P.O. Box 2188
Boise, ID 83701

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☐ E-mail
☐ Telecopy: 208.388.0234



Michelle R. Points

REAL ESTATE PURCHASE AGREEMENT

THIS REAL ESTATE PURCHASE AGREEMENT (this "Agreement") is made this 21st day of July, 2006, by and between Quasar Development LLC, an Idaho limited liability company ("Seller"), and Sunrise Development LLC, an Idaho limited liability company ("Buyer").

RECITALS

A. Seller owns that certain property located at 110 S. Cloverdale Road, City of Boise, County of Ada, State of Idaho, and commonly known as Dunham Place (the "Subdivision"), more particularly described on Exhibit A, attached hereto and made a part hereof.

B. Seller desires to sell, transfer and convey certain Building Lots, defined below, in the Subdivision, and Buyer desires to purchase such Building Lots, all according to the provisions hereinafter set forth.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and agreed, and in consideration of the recitals above, which are incorporated herein, and the premises and the mutual representations, covenants, undertakings and agreements hereinafter contained, Seller and Buyer represent, covenant, undertake and agree as follows:

1. DESCRIPTION OF PROPERTY.

Seller agrees to sell, transfer and convey and Buyer agrees to purchase and have transferred and conveyed, all for a purchase price and subject to and upon each of the terms and conditions hereinafter set forth, the following:

(a) Property. The land legally described in Exhibit A, attached hereto and made a part hereof, together with all right, title and interest of Seller in and to all easements, tenements, hereditaments, privileges and appurtenances thereunto belonging (the "Land"), and improvements and structures located on the Land (collectively, the "Improvements"). The Improvements and the Land are hereinafter collectively referred to as the "Real Property." Without limiting the foregoing, the Real Property is comprised of thirty (30) building lots (each, a "Building Lot," and collectively, the "Building Lots").

(b) Personalty. All personal property and other tangible property, if any, whether enumerated herein or not, in which Seller has an interest and which is not owned by any tenant, now or hereafter located on or in the Land or the Improvements, used in connection with the operation or maintenance thereof including, without limitation, all plans, working drawings, and specifications for the Residential Homes, defined below, to be built on the Building Lots (collectively, the "Plans and Specifications") (all of the foregoing collectively referred to herein as the "Personalty").

(c) Intangible Property. All intangible property, whether enumerated herein or not, in which Seller has an interest, now or hereafter used in connection with the operation or maintenance of the Improvements, the Land, or the Personalty, including, without limitation, all leases, licenses and other agreements to occupy all or any part of the Real Property (all hereinafter collectively referred to as the "Intangible Property").

(d) Appurtenant Rights. All right, title, and interest of Seller to land, if any, lying in the bed of any street, road, or avenue, open or proposed, at the foot of or adjoining the Land to the center line of such street, road or avenue, and to the use of all easements, if any, whether of record or not, appurtenant to the Land and the use of all strips and rights-of-way, if any, abutting, adjacent, contiguous or adjoining

such Land, and to all water and water rights, ditch and ditch rights, water storage and water storage rights (all hereinafter collectively referred to as the "Appurtenant Rights").

The Real Property, Personalty, Intangible Property and Appurtenant Rights are hereinafter sometimes collectively referred to as the "Property."

2. PURCHASE PRICE AND PAYMENT TERMS. The purchase price to be paid by Buyer to Seller for the Property (the "Purchase Price") shall be **Three Million Six Hundred Sixty Thousand and No/100 Dollars (\$3,660,000.00)**. The Purchase Price is based upon the sale of thirty (30) Building Lots at a cost of **One Hundred Twenty-Two Thousand and No/100 Dollars (\$122,000.00)** per Building Lot. If the number of Building Lots transferred to Buyer at Closing, defined below, is greater than or less than thirty (30) Building Lots, then the Purchase Price shall be recalculated based upon the formula of **One Hundred Twenty-Two Thousand and No/100 Dollars (\$122,000.00)** per Building Lot. The Purchase Price shall be payable in the following manner:

(a) **Earnest Money.** Seller acknowledges that Buyer has already deposited the sum of **Five Thousand and No/100 Dollars (\$5,000.00)** (the "Initial Deposit") with The Real Estate Group Trust Account (Rick McGraw, responsible broker), as escrowee ("TREG"). The Initial Deposit shall become non-refundable to Buyer, and shall be released to the Seller on the Approval Date, defined below. Within two (2) business days following execution of this Agreement, Buyer shall deposit an additional sum of **Twenty-Five Thousand and No/100 Dollars (\$25,000.00)** (the "Additional Deposit") with TREG. The Additional Deposit shall become non-refundable to Buyer, and shall be released to Seller, on the Approval Date. TREG shall hold the Initial Deposit and the Additional Deposit under the standard escrow instructions currently in use by TREG until release to Seller, as set forth herein. Upon the Approval Date, Buyer shall pay to Seller an amount equal to **Thirty Thousand and No/100 Dollars (\$30,000.00)** (the "Approval Deposit") within sixty (60) days following execution of this Agreement. The Initial Deposit, the Additional Deposit, and the Approval Deposit may be collectively referred to herein as the "Earnest Money". The Earnest Money shall be held by returned to Buyer or delivered to Seller in accordance with the terms hereof. The Earnest Money shall be applicable to the Purchase Price at Closing, provided that the transaction contemplated by this Agreement proceeds through Closing.

(b) **Cash.** The balance of the Purchase Price, plus or minus prorations set forth herein, shall be paid by wire transfer or official bank check on the respective Closing Date, defined below.

3. TITLE MATTERS.

(a) **Documents Evidencing Title.** Buyer may, but is not obligated to, obtain a commitment for an owner's title insurance policy for one or more Building Lot(s) issued by TitleOne Corporation ("Title Insurer"). The parties acknowledge and agree that Seller has absolutely no obligation to provide title insurance for any Building Lot(s), or pay any title insurance premiums related to such Building Lot(s), or the transactions contemplated by this Agreement.

(b) **Title Defects.** In the event Buyer obtains one or more title commitments relating to the Building Lot(s), Buyer shall object in writing to any material exception shown thereon (other than monetary encumbrances that shall be released on the Closing Date using proceeds of the transactions contemplated by this Agreement and other than exceptions caused by Buyer) no later than the Closing Date and, if after exercise of Seller's best efforts to remove same, said exception(s) cannot be removed from the title commitment for any Building Lot by Seller on or before the Closing Date, Buyer shall have the right to terminate this Agreement with respect to the affected Building Lot(s) only, in which event all parties thereafter shall be released and discharged from any further obligation under this Agreement relating solely to the affected Building Lot(s). Notwithstanding the foregoing, the parties shall proceed through Closing on all other Building Lots as further set forth in this Agreement. The failure of Buyer to deliver written notice of an objection to a material exception shown on any title commitment within the time provided shall conclusively constitute the approval by Buyer of the exceptions shown in all title commitments.

4. INSPECTION.

(a) Right to Inspect. For a period of fifteen (15) days from the date hereof (sometimes hereinafter referred to as the "Review Period"), Buyer and Buyer's agents, shall have the right, during reasonable hours, to inspect the Property, and to undertake, at Buyer's expense, such tests and surveys and other activities as it shall determine in connection therewith, including, without limitation, the right to make: (i) a complete physical inspection of the Property; (ii) investigations regarding zoning, subdivision and code requirements; (iii) real estate tax analysis and investigation of available financing; (iv) investigation of all records and all other documents and matters, public or private pertaining to Seller's ownership of the Property; and (v) to make application for and receive any and all permits, approvals and written agreements satisfactory to Buyer (including, without limitation, site plan approvals, subdivision plat(s), building and use permits) required by the appropriate public or governmental authorities to permit the development of the Property in accordance with Buyer's intended use. The foregoing shall hereinafter sometimes be collectively referred to as the "Inspection."

During the Review Period, Seller shall give Buyer reasonable access to the Property and Seller's books and records relating to the Property for Buyer's Inspection. In addition, Seller shall furnish to Buyer, during the Review Period, such engineering data and other information relating to the Property as Buyer shall reasonably request; provided that such information is currently in Seller's possession. Buyer agrees to retain all confidential information relating to Seller and/or the Property so obtained from Seller on a confidential basis; provided, however, any information relating to the Property or Seller obtained by Buyer from a person or entity other than Seller and information already in the public domain shall not be subject to the foregoing confidentiality provision. Upon the termination of this Agreement for any reason, Buyer shall promptly return to Seller any and all printed information, without retaining copies thereof, received from Seller in connection with the transaction contemplated by this Agreement. The Inspection to be conducted by Buyer shall not disturb the quiet enjoyment of Seller or be without prior notice to Seller.

Buyer agrees to indemnify and hold Seller harmless from any and all costs and expenses incurred or sustained by Seller as a result of such acts of Buyer, or Buyer's agents or independent contractors pursuant to the right granted by this paragraph; provided Buyer's liability and indemnity shall not extend to any condition currently existing or discovered on the Property.

(b) Approval Notice. In the event that Buyer, in Buyer's sole and exclusive discretion, is not satisfied for any reason with the results of the Inspection, Buyer may, by written notice (the "Termination Notice") delivered to Seller on or before two (2) days after the termination of the Review Period (the "Approval Date"), terminate this Agreement, which thereafter shall be of no force and effect without further action by the parties hereto. Upon a termination as herein provided, the Earnest Money, to the extent the same has been paid, shall be returned to Buyer. It is understood and agreed that the failure of Buyer to deliver a Termination Notice for any reason, as a result of Buyer's Inspection, on or before the Approval Date shall constitute a waiver of Buyer's right to terminate this Agreement pursuant to the terms of this paragraph.

(c) Continuing Right to Inspect. Notwithstanding the limitations of this Section 4, Buyer shall have the continuing right to continue the Inspection after the Review Period expires.

5. BUYER'S CONDITIONS PRECEDENT TO CLOSING.

(a) Conditions Precedent. This Agreement, and Buyer's obligation to close the transaction contemplated herein, are subject to the following express conditions precedent in favor of Buyer. Notwithstanding anything to the contrary which may be contained herein, each of the conditions precedent may be waived in writing by Buyer, such conditions being for the exclusive protection and benefit of Buyer. Seller agrees to cooperate with Buyer and to execute any documents which may be necessary or convenient to the performance or satisfaction of these conditions by Buyer on or before

Closing:

(i) Zoning. That at Closing, the Property and the Buyer's intended use is (or will be) zoned and/or subdivided and all studies, reports, permits, approvals and written agreements satisfactory to Buyer (including, without limitation, site plan approvals, subdivision plat(s), building and use permits, and environmental reports and permits) required by the appropriate public or governmental authorities to permit the development of the Property in accordance with Buyer's intended use have been finally adopted, all without conditions that, in Buyer's reasonable opinion, would cause construction of facilities and/or site work on the Property to be economically unfeasible.

(ii) Survey. Seller shall, at Seller's sole cost and expense, deliver to Buyer no later than thirty (30) days following the date hereof, a current ALTA survey of the Property, prepared by a licensed surveyor in accordance with Buyer's requirements and certified to both Buyer and Seller (the "Survey") which shall show: (1) the legal description of the Property (it is agreed that the legal description contained in the Survey shall be the legal description used in the Warranty Deed conveying the Property to Buyer); (2) that the Property extends to all adjacent streets, alleys and rights-of-way, which streets, alleys and rights-of-way have been dedicated to, and accepted for public use by, the appropriate governmental authority; (3) that utilities are available to the boundaries of the Property adequate to serve Buyer's proposed use; and (4) if the Property contains more than one parcel, then all of the parcels together form one parcel, and each parcel forming the larger parcel shares its interior boundary lines with the other parcel or parcels. The Survey shall be sufficient to cause the Title Insurer to delete the standard printed survey exception and to issue a title policy free from any survey-related objections or exceptions, whatsoever.

(iii) Title. Title to the Property shall be good and marketable and shall be free and clear of all liens, encumbrances, easements, assessments, restrictions, tenancies (whether recorded or unrecorded) and other exceptions to title, except the lien of taxes not yet due and payable, and the Permitted Exceptions.

(b) Failure of a Condition Precedent. In the event of a failure of any condition precedent set forth herein, then Buyer may declare this Agreement null and void, in which event the refundable Earnest Money, if any, shall be returned to Buyer, and the parties shall have no further obligations or liabilities hereunder.

5A. SELLER'S CONDITIONS PRECEDENT TO CLOSING.

(a) Conditions Precedent. This Agreement, and Seller's obligation to close the transaction contemplated herein, are subject to the following express conditions precedent in favor of Seller. Notwithstanding anything to the contrary which may be contained herein, each of the conditions precedent may be waived in writing by Seller, such conditions being for the exclusive protection and benefit of Seller. Buyer agrees to cooperate with Seller and to execute any documents which may be necessary or convenient to the performance or satisfaction of these conditions by Seller on or before Closing:

(i) Financial Ability. Buyer has the financial means and assets to satisfy all of Buyer's obligations under this Agreement.

(ii) Negotiations with Canal Company. Seller has completed, to Seller's sole satisfaction, negotiations with Nampa & Meridian Irrigation District related to the repair of the Ridenbaugh Canal running through portions of the Property on terms reasonably satisfactory to Seller, in Seller's sole discretion.

(b) Failure of a Condition Precedent. In the event of a failure of any other condition precedent set forth herein, then Seller may declare this Agreement null and void, and the parties shall have no further obligations or liabilities hereunder. Notwithstanding any other provision contained herein, in the event this Agreement fails to close because of a failure of condition precedent 5A(a)(ii) only, Seller agrees to return the Earnest Money to Buyer.

6. REPRESENTATIONS, WARRANTIES AND COVENANTS OF SELLER.

Seller hereby represents, warrants and covenants to Buyer that as of the date hereof and as of the respective Closing Date:

(a) Owner, Marketable Title. That Seller is and shall be the owner of marketable and insurable fee simple title to the Property, free and clear of all liens, encumbrances, covenants, conditions, restrictions, rights-of-way, easements, leases, tenancies, licenses, claims, options, options to purchase and any other matters affecting title, except, as of the date hereof, for the exceptions shown on the Title Commitment, and those liens of a definite and ascertainable amount which shall be removed at Closing. There shall be no change in the ownership, operation or control of the Property from the date hereof to the Closing Date. Without limiting the foregoing, Seller believes that Buyer may need to submit to the applicable governmental entities a hillside development application prior to developing certain Building Lots, but Seller makes no representation about which Building Lots may require submission and approval of such hillside development application.

(b) No Judicial Proceedings. That there are no condemnation or judicial proceedings, administrative actions or examinations, claims or demands of any type which have been instituted or which are pending or threatened against Seller, the Property or any part thereof. In the event Seller receives notice of any such proceeding, action, examination or demand, Seller shall promptly deliver a copy of such notice to Buyer.

(c) Access. That there is legal access to the Property from adjoining private or public streets, highways, roads and ways and adequate access to all electric, telephone, drainage and other utility equipment and services required by law or necessary for the operation of the Property. No fact or condition exists which would result in the termination or impairment of the furnishing of service to the Property of electric, telephone, drainage or other such utility service.

(d) Compliance With Laws. That, to Seller's actual knowledge without independent inquiry or investigation, Seller and the Property, and the use and operation thereof, are in compliance with all applicable municipal and governmental laws, ordinances, regulations, licenses, permits and authorizations, and there are presently in effect all licenses, permits and other authorizations necessary for the use, occupancy and operation of the Property as it is presently being operated. That, to Seller's actual knowledge without independent inquiry or investigation, there exists no condition with respect to the operation, use or occupancy of the Property which violates any environmental, zoning, building, health, fire or similar law, ordinance or regulation. That there has been no notice of any violation of any environmental, zoning, building, health, fire or similar law, ordinance or regulation relative to the maintenance, operation, use or occupancy of any building or other improvements constituting part of the Property which has not been fully complied with, nor has Seller received any notice, written or otherwise, from a government agency requiring the correction of any condition with respect to the Property which has not been fully complied with. Seller shall promptly comply with any notices received after the date hereof and shall promptly deliver to Buyer a copy of any such notice together with evidence of compliance therewith.

(e) Good Condition and Repair. That from and after the date hereof and until the respective Closing Date, Seller shall maintain, or cause to be maintained, the Property in good condition and repair, and shall continue to make or cause to be made ordinary repairs, replacements and maintenance to the Property.

(f) No Mechanic's Liens. That there are and will be no unrecorded mechanic's or materialmen's liens or any claims for such liens affecting the Property, and as of the respective Closing Date, there will be no work or material performed or furnished for which payment will not have previously been made in the ordinary course of business.

6A. REPRESENTATIONS, WARRANTIES AND COVENANTS OF BUYER.

Buyer hereby represents, covenants and warrants to Seller that as of the date hereof and as of the respective Closing Date:

(a) Duly Organized; Good Standing. That Buyer is an Idaho limited liability company that has been duly organized and is validly existing and in good standing under the laws of the State of Idaho, and has the full power and authority to: (i) acquire title to the Property; (ii) enter into this Agreement; and (iii) carry out and consummate the transactions contemplated by this Agreement.

(b) Authority. That the execution and delivery of this Agreement by the signatories hereto on behalf of Buyer, and the performance of this Agreement by Buyer, have been duly authorized by Buyer. Neither the execution of this Agreement nor the consummation of the transactions contemplated hereby will: (i) result in a breach of or default under agreement, document or instrument to which Buyer is a party or by which Buyer is bound; or (ii) violate any existing statute, restriction, order, writ, injunction or decree of any court, administrative agency or governmental body to which Buyer is subject.

(c) No Pending Actions. That there is no action, suit, proceeding, inquiry, or investigation before any court, governmental agency or instrumentality pending or, to the knowledge of Buyer, threatened, against Buyer wherein an unfavorable decision, ruling or finding would adversely affect Buyer's ability to consummate the transactions contemplated by this Agreement.

(d) Buyer's Financial Resources. Buyer has the financial resources necessary to consummate the transactions contemplated by this Agreement.

7. CLOSING AND RELATED MATTERS.

(a) First Closing Date. Buyer and Seller shall close on the purchase of fifteen (15) Building Lots mutually designated in writing by Buyer and Seller (the "First Building Lots") on or before thirty (30) days following recordation of the final plat of the Subdivision with the Ada County, Idaho Recorder's Office (the "First Closing Date") at the office of TitleOne Corporation ("Escrowee"). The parties shall identify the First Building Lots in an amendment to this Agreement no later than thirty (30) days prior to the First Closing Date. No later than one (1) day prior to the First Closing Date, Seller and Buyer shall walk the First Building Lots to confirm that all on-site improvements including, without limitation, grading, utilities stubbed, sidewalks completed, and all improvements to the First Building Lots have been finally and properly completed as submitted for approval to the City of Boise. Any repairs, changes or improvements to the on-site improvements to the First Building Lots after the First Closing Date shall be Buyer's sole responsibility. The First Closing Date shall occur no later than July 31, 2007. In the event Seller fails to record the final plat of the Subdivision with the Ada County Recorder's Office by July 31, 2007, Buyer may, at its sole discretion, terminate this Agreement upon written notice to Seller, and Buyer may then obtain a full refund of the Earnest Money without any further obligations under the terms of this Agreement.

(b) Seller's Deposits. On or before the First Closing Date, Seller shall deliver the following documents to Escrowee:

(i) Signed and acknowledged warranty deed, transferring title to each of the First Building Lots from Seller to Buyer;

(ii) Seller-approved Closing statement;

(iii) The Plans and Specifications relating to the First Building Lots; and

(iv) Such other documents as Escrowee, Buyer or Buyer's attorneys may reasonably require in order to effectuate or further evidence the intent to transfer title to the First Building Lots.

All of the documents and instruments to be delivered by Seller hereunder shall be in form and substance reasonably satisfactory to counsel for Buyer.

(c) Buyer's Deposits. On or before the First Closing Date, Buyer shall deliver the following documents to Escrowee:

(i) Buyer-approved Closing statement;

(ii) Cash or certified funds necessary to meet Buyer's obligations under this Agreement; and

(iii) Such other documents as the Escrowee, Seller or Seller's attorneys may reasonably require in order to effectuate or further evidence the intent to transfer title to the First Building Lots.

All of the documents and instruments to be delivered by Buyer hereunder shall be in form and substance reasonably satisfactory to counsel for Seller.

(d) Second Closing Date. Buyer and Seller shall close on the purchase of the remaining fifteen (15) Building Lots mutually designated in writing by Buyer and Seller (the "Second Building Lots") on or before ninety (90) days following recordation of the final plat with the Ada County, Idaho Recorder's Office (the "Second Closing Date") at the office of Escrowee. The parties shall identify the Second Building Lots in an amendment to this Agreement no later than thirty (30) days before the Second Closing Date. No later than one (1) day prior to the Second Closing Date, Seller and Buyer shall walk the Second Building Lots to confirm that all on-site improvements including, without limitation, grading, utilities stubbed, sidewalks completed, and all improvements to the Second Building Lots have been finally and properly completed. Any repairs, changes or improvements to the on-site improvements to the Second Building Lots after the Second Closing Date shall be Buyer's sole responsibility.

(e) Seller's Deposits. On or before the Second Closing Date, Seller shall deliver the following documents to Escrowee:

(i) Signed and acknowledged warranty deed, transferring title to each of the Second Building Lots from Seller to Buyer;

(ii) Seller-approved Closing statement;

(iii) The Plans and Specifications relating to the Second Building Lots; and

(iv) Such other documents as Escrowee, Buyer or Buyer's attorneys may reasonably require in order to effectuate or further evidence the intent to transfer title to the Second Building Lots.

All of the documents and instruments to be delivered by Seller hereunder shall be in form and substance reasonably satisfactory to counsel for Buyer.

(f) Buyer's Deposits. On the Second Closing Date, Buyer shall deliver the following documents to Escrowee:

- (i) Buyer-approved Closing statement;
- (ii) Cash or certified funds necessary to meet Buyer's obligations under this Agreement; and
- (iii) Such other documents as the Escrowee, Seller or Seller's attorneys may reasonably require in order to effectuate or further evidence the intent to transfer title to the Second Building Lots.

All of the documents and instruments to be delivered by Buyer hereunder shall be in form and substance reasonably satisfactory to counsel for Seller.

(g) **Escrow Closing.** The Closing of the transaction contemplated herein shall take place at the office of Escrowee, 1101 W. River Street, Suite 201, Boise, Idaho 83702; 208/424-8511 (telephone); 208/424-0049 (facsimile). Closing shall be through escrow with Escrowee, using form escrow instructions then in use by Escrowee, modified to reflect the terms and conditions of the transaction contemplated herein. The parties shall use their best efforts to have the Title Insurer commit to insure the title of Buyer upon receipt of all of Buyer's and Seller's deposits. The cost of the escrow (including long term escrow fees, if any) relating to the transaction contemplated herein shall be equally divided between Seller and Buyer. This Agreement shall not be merged into any escrow agreement, and the escrow agreement shall always be deemed auxiliary to this Agreement. The provisions of this Agreement shall always be deemed controlling as between Seller and Buyer. The respective attorneys for Seller and Buyer are hereby authorized to enter into and execute such escrow agreement and any amendments thereto.

(h) **Possession.** Possession of each Building Lot shall be delivered to Buyer when the warranty deed to such Building Lot is recorded by Escrowee.

(i) **Tax-deferred Exchange.** Notwithstanding any other provisions contained herein, either party may use the transaction contemplated herein to facilitate a tax-deferred exchange of property under such terms and conditions that qualify as a tax-deferred exchange under Section 1031 of the Internal Revenue Code of 1986, as amended. The parties hereby agree to cooperate with each other fully in completing such tax-deferred exchange(s), provided, however that (i) such tax-deferred exchange(s) creates no additional liability to the party not effecting such tax deferred exchange, (ii) all costs of facilitating such tax-deferred exchange are paid by the party effecting the 1031 Exchange, and (iii) Closing of the transaction contemplated by this Agreement is not delayed due to such tax-deferred exchange.

8. PRORATIONS AND ADJUSTMENTS.

The following items shall be prorated and adjusted as of the respective Closing Date:

(a) **Real Estate Taxes.** General real estate taxes and all other levies and charges against the Property for the year of Closing that are accrued but not yet due and payable. Such taxes shall be prorated as of each respective Closing Date on the basis of the most recent ascertainable tax bills.

(b) **Utilities.** All charges for utilities, including water charges, shall be paid by Seller to the respective Closing Date. Bills received after the respective Closing Date which relate to expenses incurred or services performed allocable to the period prior to the date of the respective Closing Date shall be paid by Seller following such respective Closing Date as and when due.

(c) **Closing Fees.** Any impositions on the conveyance shall be paid by Seller. Buyer shall not be liable for any state, county, federal income, excise or sales tax liabilities of Seller. Premiums for title insurance (if applicable), and all recording fees in connection with the conveyance, shall be paid by Buyer. All other Closing fees shall be split equally between the parties.

(d) Accounts Payable. All accounts payable and other obligations incurred by Seller in connection with the Property prior to the respective Closing Date shall be caused to be paid or performed by Seller on or before the respective Closing Date and Buyer assumes no obligation or responsibility for the payment or performance thereof. Seller shall use best efforts to remove any and all liens or encumbrances placed against the Property or any portion thereof by vendors, materialmen or subcontractors prior to the respective Closing Date for such Building Lot(s). Seller shall have the right to insure around any existing liens, in order to facilitate the release of any encumbrance(s) on a timely basis.

(e) Other Items. Such other items as are customarily prorated in transaction of the type contemplated in this Agreement.

9. POST-CLOSING OBLIGATIONS.

(a) Marketing. Buyer agrees to list for sale with The Real Estate Group all residential homes constructed on such Building Lots (collectively, the "Residential Homes"). Buyer agrees that The Real Estate Group shall earn brokerage fees and commission of not less than six percent (6%) of the sales price of each Residential Home. Such listing agreement shall remain in effect for a period of at least one (1) year following completion of construction on each respective Residential Home. Seller, as the principal brokers of The Real Estate Group, agrees to use its best efforts to list and market for sale the Residential Homes once such Residential Homes are listed for sale. This provision shall survive each respective Closing.

(b) Homeowners Association Fees. Buyer acknowledges and agrees that the Building Lots will be assessed an annual assessment by the Subdivision's Homeowners Association ("HOA") at the rate of **Five Hundred and No/100 Dollars (\$500.00)** per year (the "Annual Assessment"), and Buyer agrees to pay the Annual Assessment for all Building Lots owned by Buyer as and when the Annual Assessments become due. Additionally, the HOA will charge the owner of each Building Lot a set up fee in the amount of **Two Hundred Fifty and No/100 Dollars (\$250.00)** (the "Set Up Fee"), and Buyer agrees to pay the Set Up Fee upon the later of: (i) Closing; or (ii) formation of the HOA. The HOA will also charge a transfer fee in the amount of **Three Hundred and No/100 Dollars (\$300.00)** (the "Transfer Fee") upon the sale of each Building Lot and the Residential Home constructed thereon, and Buyer agrees to either pay the Transfer Fee upon closing on the sale of such Building Lot and Residential Home thereon, or notify Buyer's buyer in writing of the Transfer Fee and the requirement to pay such Transfer Fee upon closing of the sale of such Building Lot and Residential Home thereon. This provision shall survive each respective Closing.

(c) Construction. Buyer shall construct all Residential Homes on the Building Lots in compliance with the guidelines promulgated by the Architectural Control Committee ("ACC") of the Subdivision (collectively, the "Guidelines"). The Guidelines shall set forth rules relating to, without limitation, paint colors and exterior stone ornamentation on the Residential Homes, the landscaping criteria for the Building Lots, and the ACC's approval process. Seller shall provide to Buyer a copy of the Guidelines no later than January 31, 2007. This provision shall survive each respective Closing.

10. DEFAULT AND REMEDIES.

(a) Default by Buyer. If Buyer should fail to consummate the transaction contemplated herein for any reason other than default by Seller, Seller may elect any one or more of the following remedies: (i) to enforce specific performance of this Agreement; (ii) to bring a suit for damages for breach of this Agreement; (iii) to terminate this Agreement whereupon Buyer will reimburse Seller for Seller's out-of-pocket expenses incurred with respect to this transaction, including reasonable attorneys' fees and inspection costs; or (iv) pursue any and all remedies at law or equity. No delay or omission in the exercise of any right or remedy accruing to Seller upon the breach by Buyer under this Agreement shall impair such right or remedy or be construed as a waiver of any such breach theretofore or thereafter occurring. The waiver by Seller of any condition or the breach of any term, covenant or condition herein

contained shall not be deemed to be a waiver of any other term, covenant, condition or any subsequent breach of the same or any other term, covenant or condition contained herein.

(b) **Default by Seller.** If Seller should fail to consummate the transaction contemplated herein for any reason other than default by Buyer, Buyer may elect any one or more of the following remedies: (i) to enforce specific performance of this Agreement; (ii) bring suit for damages for breach of this Agreement; (iii) to terminate this Agreement whereupon Seller shall reimburse Buyer for Buyer's out-of-pocket expenses incurred with respect to this transaction, including reasonable attorney's fees and costs; (iv) be entitled to the return of the Earnest Money; or (v) pursue any and all remedies at law or equity. The waiver by Buyer of any condition or the breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of any other term, covenant, condition or any subsequent breach of the same or any other term, covenant or condition contained herein.

11. INDEMNIFICATIONS AND DEFENSE OF CLAIMS.

(a) **Seller's Indemnity.** Seller shall indemnify, defend and hold Buyer harmless against and in respect of: (i) any damage or deficiency resulting from any breach of warranty or any non-fulfillment of any agreement on the part of Seller under this Agreement or from any misrepresentation in or omissions from any document or other instrument executed and delivered by Seller under this Agreement, unless waived in writing by Buyer; and/or (ii) all actions, suits, proceedings, demands, assessments, judgments, reasonable court costs and attorneys' fees and expenses incident to or incurred by Buyer in connection with any of the foregoing.

(b) **Buyer's Indemnity.** Buyer shall indemnify, defend and hold Seller harmless against and in respect of: (i) any damage or deficiency resulting from any breach of warranty or any non-fulfillment of any agreement on the part of Buyer under this Agreement or from any misrepresentation in any document or other instrument executed and delivered by Buyer under this Agreement, unless waived in writing by Seller; and/or (ii) all actions, suits, proceedings, demands, assessments, judgments, reasonable court costs and attorneys' fees and expenses incident to or incurred by Seller in connection with any of the foregoing.

12. BROKERAGE.

(a) **Representation Confirmation:** Check one (1) box in Section 1 and one (1) box in Section 2 below to confirm that, in this transaction, the brokerage(s) involved had the following relationship(s) with the Buyer and Seller:

Section 1:

- ☐ The brokerage working with the Buyer is acting as an Agent for the Buyer.
- ☒ The brokerage working with the Buyer is acting as a Limited Dual Agent for the Buyer, without an Assigned Agent.
- ☐ The brokerage working with the Buyers acting as a Limited Dual Agent for the Buyer, and has an Assigned Agent acting solely on behalf of the Buyer.
- ☐ The brokerage working with the Buyer is acting as a Non-Agent for the Buyer.

Section 2:

- ☐ The brokerage working with the Seller is acting as an Agent for the Seller.
- ☒ The brokerage working with the Seller is acting as a Limited Dual Agent for the Seller, without an Assigned Agent.
- ☐ The brokerage working with the Seller is acting as a Limited Dual Agent for the Seller, and has an Assigned Agent acting solely on behalf of the Seller.
- ☐ The brokerage working with the Seller is acting as a Non-Agent for the Seller.

Each party signing this Agreement confirms that such party has received, read and understood the Agency Disclosure Brochure adopted or approved by the Idaho Real Estate Commission, and has consented to the relationship confirmed above. In addition, each party confirms that the Selling/Listing Brokerage's agency office policy was made available for inspection and review. Each party understands that such party is a "Customer," and is not represented by a brokerage unless there is a signed written agreement for agency representation.

(b) The parties acknowledge that members of Quasar Development LLC are licensed real estate agents and/or brokers in the State of Idaho, but the parties agree that Seller's members shall not receive any finder's or brokerage fees or commissions related to this Agreement, except as expressly set forth in paragraph 9. Without limiting the foregoing, each of the parties represents and warrants to the other that it has not incurred and will not incur any liability for finder's or brokerage fees or commissions in connection with this Agreement. It is agreed that if any claims for finder's or brokerage fees or commissions are ever made against Seller or Buyer in connection with this transaction, all such claims shall be handled and paid by the party (the "Committing Party") whose actions or alleged commitments form the basis of such claim. The Committing Party further agrees to indemnify, defend and hold the other harmless from and against any and all claims or demands with respect to any finder's or brokerage fees or commissions or other compensation asserted by any person, firm or corporation in connection with this Agreement or the transaction contemplated hereby. This representation shall survive each respective Closing indefinitely.

13. INTERVENING DAMAGE OR LOSS; CONDEMNATION.

Seller shall deliver the Property to Buyer in substantially the same condition on the Closing Date as on the date hereof, excepting therefrom ordinary wear and tear. If, prior to the respective Closing Date, all or a substantial portion of the Property having a replacement value in excess of **Five Hundred Thousand and No/100 Dollars (\$500,000.00)** is destroyed by fire or other casualty or is taken or made subject to eminent domain proceedings, then Seller shall immediately notify Buyer in writing. Thereupon Buyer shall, at its sole option, have the right to: (i) terminate this Agreement; or (ii) complete the transaction contemplated by this Agreement, in which event Seller shall: (x) deliver to Buyer a duly executed assignment of all insurance proceeds or condemnation awards payable as a result of such fire, casualty, or condemnation, in form and substance satisfactory to Buyer; and (y) pay the amount of any deductible thereunder (Seller represents and warrants that Seller shall maintain until the respective Closing Date full replacement cost insurance and the present amount of rent loss insurance for the Property).

14. NOTICES.

All notices, demands, requests, and other communications under this Agreement shall be in writing and shall be deemed properly served or delivered, if delivered by hand to the party to whose attention it is directed, or when sent, three (3) days after deposit in the U.S. mail, postage prepaid, certified mail, return receipt requested, or one (1) day after deposit with a nationally recognized air carrier providing next day delivery, or if sent via facsimile transmission, when received, addressed as follows:

(a) If to Seller:

Quasar Development LLC
3090 Gentry Way #150
Meridian, ID 83642
208/288-1516 (facsimile)

(b) If to Buyer:

Sunrise Development LLC
372 S. Eagle Road, Suite 155
Eagle, ID 83616
(208) 898-4949 (facsimile)

With copy to:

David T. Krueck, Esq.
225 N. 9th St., Ste. 820
P.O. Box 1097
Boise, ID 83701
(208) 331-1529 (facsimile)

15. MISCELLANEOUS.

(a) Date Hereof. As used herein, the term "the date hereof" shall mean the date first set forth above.

(b) Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto, and their respective heirs, personal representatives, successors and assigns.

(c) Business Days. Wherever under the terms and provisions of this Agreement the time for performance falls upon a Saturday, Sunday, or legal holiday, such time for performance shall be extended to the next business day.

(d) Counterparts. This Agreement may be executed in two (2) or more counterparts, each of which shall constitute an original, but all together shall constitute one and the same agreement.

(e) Survival. The terms, provisions, and covenants (to the extent applicable) and indemnities shall survive the respective Closing and delivery of the respective warranty deed, and this Agreement shall not be merged therein, but shall remain binding upon and for the parties hereto until fully observed, kept or performed.

(f) Entire Agreement; Modifications. This Agreement embodies the entire contract between the parties hereto with respect to the subject matter hereof, and supersedes any and all prior agreements, whether written or oral, between the parties including, without limitation, that certain Letter of Intent, dated May 11, 2006, as amended to date. No extension, change, modification or amendment to or of this Agreement of any kind whatsoever shall be made or claimed by Seller or Buyer, and no notice of any extension, change, modification or amendment made or claimed by Seller or Buyer shall have any force or effect whatsoever unless the same shall be endorsed in writing and be signed by the party against which the enforcement of such extension, change, modification or amendment is sought, and then only to the extent set forth in such instrument. Nothing herein is intended, nor shall it be construed, as obligating either party to agree to any modification of this Agreement.

(g) Representation by Counsel. All parties hereto have either: (i) been represented by separate legal counsel; or (ii) have had the opportunity to be so represented. Thus, in all cases, the language herein shall be construed simply and in accordance with its fair meaning and not strictly for or against a party, regardless of which party prepared or caused the preparation of this Agreement.

(h) Captions. The captions at the beginning of the several paragraphs, respectively, are for convenience in locating the context, but are not part of the text.

(i) Severability. In the event any term or provisions of this Agreement shall be held illegal, invalid or unenforceable or inoperative as a matter of law, the remaining terms and provisions of this Agreement shall not be affected thereby, but each such term and provision shall be valid and shall remain in full force and effect.

(j) Governing Law. This Agreement shall be governed by the laws of the State of Idaho.

(k) Attorneys' Fees. If either party shall default in the full and timely performance of this Agreement and said default is cured with the assistance of an attorney for the other party and before the commencement of a suit thereon, as a part of curing said default, the reasonable attorneys' fees incurred by the other party shall be reimbursed to the other party upon demand. In the event that either party to this Agreement shall file suit or action at law or equity to interpret or enforce this Agreement hereof, the unsuccessful party to such litigation agrees to pay to the prevailing party all costs and expenses, including reasonable attorneys' fees, incurred by the prevailing party, including the same with respect to an appeal. Without limiting the foregoing, Seller and Buyer agree to be solely responsible for any attorneys' fees and costs incurred by that party relating to the drafting of this Agreement.

(l) Time of Essence. All times provided for in this Agreement or in any other instrument or document referred to herein or contemplated hereby, for the performance of any act will be strictly construed, it being agreed that time is of the essence of this Agreement.

(m) No Public Disclosure. The parties agree not to disclose publicly (except as may be required by applicable law or debt instruments and/or financing or credit agreements by which a party is bound) any financial information in connection with the sale of the Property hereunder, and/or the terms and conditions of this Agreement. Neither party shall release any press releases or otherwise publicly disclose the subject of this Agreement without the prior written consent of the other party, which consent may be withheld, conditioned, or delayed in such party's sole discretion. This provision shall survive each respective Closing and the termination of this Agreement without limitation.

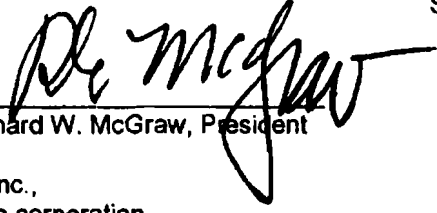
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IN WITNESS WHEREOF, the parties hereto have executed this Real Estate Purchase Agreement as of the date set forth above.

SELLER:

QUASAR DEVELOPMENT LLC,
an Idaho limited liability company

By: McGraw & Co., Inc.,
an Idaho corporation,
its Member

By: 
Richard W. McGraw, President

By: Mirlyn, Inc.,
an Idaho corporation,
its Member

By: 
Bradley M. Minasian, President

By: Alvaro Real Estate, Inc.
an Idaho corporation,
its Member

By: 
Amanda Alvaro, President

BUYER:

SUNRISE DEVELOPMENT LLC,
an Idaho limited liability company

By: _____
Sandra K. Reynolds, Managing Member

IN WITNESS WHEREOF, the parties hereto have executed this Real Estate Purchase Agreement as of the date set forth above.

SELLER:

QUASAR DEVELOPMENT LLC,
an Idaho limited liability company

By: McGraw & Co., Inc.,
an Idaho corporation,
its Member

By: _____
Richard W. McGraw, President

By: Mirlyn, Inc.,
an Idaho corporation,
its Member

By: _____
Bradley M. Minasian, President

By: Alvaro Real Estate, Inc.
an Idaho corporation,
its Member

By: _____
Amanda Alvaro, President

BUYER:

SUNRISE DEVELOPMENT LLC,
an Idaho limited liability company

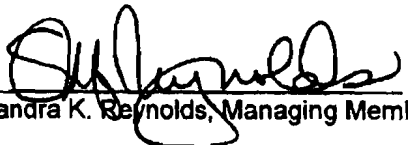
By: 
Sandra K. Reynolds, Managing Member

EXHIBIT A

LEGAL DESCRIPTION

A Portion of the Northwest ¼ of the Northwest ¼ of Section 15, Township 3 North, Range 1 East, Boise Meridian, Boise, Ada County, Idaho, more particularly described as follows;

Beginning at a found Brass Cap Monument marking the West ¼ Corner of Section 15, Township 3 North, Range 1 East, Boise Meridian, from which a found Brass Cap Monument marking the Northwest corner of said Section bears North 00°08'59" East, a distance of 2,661.15 feet;

thence along the Westerly boundary of Section 15, North 00°08'59" East, a distance of 1772.00 feet (formerly North 00°16' West, a distance of 1772.00 feet) to the Southwest corner of property described in Warranty Deed Instrument Number 351262;

thence along the Southerly boundary of said property South 75°34'27" East, a distance of 63.10 feet to a set 5/8 inch rebar with plastic cap stamped "FLSI PLS 7612" at the **TRUE POINT OF BEGINNING**;

thence continuing along said boundary the following courses and distances:

South 75°34'27" East, a distance of 111.90 feet to a set 5/8 inch rebar with plastic cap stamped "FLSI PLS 7612";

North 66°25'33" East, a distance of 265.00 feet (formerly North 66°00' East, a distance of 265.00 feet) to a set 5/8-inch rebar with plastic cap stamped "FLSI PLS 7612";

South 59°34'27" East, a distance of 400.00 feet (formerly South 60°00' East, a distance of 400.00 feet)

thence leaving the Southerly boundary of property described in Warranty Deed Instrument Number 351262, North 12°29'45" East, a distance of 209.48 feet to a set 5/8 inch rebar with plastic cap stamped "FLSI PLS 7612";

thence North 40°03'28" West, a distance of 280.95 feet to a set 5/8-inch rebar with plastic cap stamped "FLSI PLS 7612";

thence North 08°38'06" East, a distance of 177.75 feet to a found 5/8 inch rebar with no cap, set plastic cap stamped "FLSI PLS 7612" at the Southerly corner common to property described in Bargain and Sale Deed Instrument Number 9360806 and Warranty Deed Instrument Number 102030150;

thence along the Northerly boundary of property described in Warranty Deed Instrument Number 105093107, also being the Southerly boundary of property described in Bargain and Sale Deed Instrument Number 9360806 and Warranty Deed Instrument Number 98034874, North 84°49'48" West, a distance of 177.22 feet (formerly North 84°56" West) to a set 5/8 inch rebar with plastic cap stamped "FLSI PLS 7612" at an angle point in the Southerly boundary of property described in Warranty Deed Instrument Number 98034874;

thence continuing along the Northerly boundary of property described in Warranty Deed Instrument Number 105093107, also being the Southerly boundary of property described in Warranty Deed Instrument Number 98034874 and Quit Claim Deed Instrument Number 103114157, North 64°53'00" West, a distance of 249.65 feet (formerly North 64°17" West, a distance of 238.50 feet) to a found 1/2 inch rebar with plastic cap stamped "PLS 4998" at an angle point in the Southerly boundary of property described in Quit Claim Deed Instrument Number 103114157;

thence continuing along the Northerly boundary of property described in Warranty Deed Instrument Number 105093107, also being the Southerly boundary of property described in Quit Claim Deed Instrument Number 103114157 and Warranty Deed Instrument Number 94026991, North 80°19'27" West, a distance of 212.36 feet to a set 5/8 inch rebar with plastic cap stamped "FLSI PLS 7612" on the Easterly Right-of-Way of South Cloverdale Road;

thence along said Right-of-Way the following courses and distances:

South 00°08'59" West, a distance of 156.82 feet to a set 5/8 inch rebar with plastic cap stamped "FLSI PLS 7612";

South 06°02'12" East, a distance of 190.48 feet to a found 1/2 inch rebar with plastic cap stamped "PLS 4998";

South 04°58'39" West, a distance of 166.66 feet to a found 1/2 inch rebar with plastic cap stamped "PLS 4998";

North 89°51'01" West, a distance of 6.50 feet to a found 1/2 inch rebar with plastic cap stamped "PLS 4998";

South 00°08'59" West, a distance of 56.38 feet to a found 1/2 inch rebar with plastic cap stamped "PLS 4998";

South 89°51'01" East, a distance of 26.15 feet to a found 1/2 inch rebar with plastic cap stamped "PLS 4998";

South 00°08'59" West, a distance of 59.75 feet to the **TRUE POINT OF BEGINNING**;
Containing 357,216 square feet, 8.200 acres, more or less.

The Basis of Bearings for this description is from the found Brass Cap Monument marking the West 1/4 Corner of Section 15 to the found Brass Cap Monument marking the Northwest Corner thereof, which bears North 00°08'59" East, a distance of 2,661.15 feet.

Trout ♦ Jones ♦ Gledhill ♦ Fuhrman, P.A.
A T T O R N E Y S A T L A W

David T. Krueck

July 31, 2007

**VIA FACSIMILE AND U.S. MAIL
FAX NO. 288-1516**

Amanda Alvaro
Quasar Development LLC
3090 Gentry Way #150
Meridian, ID 83642

**Re: Sunrise Development, LLC / Quasar Development LLC
 Dunham Place Subdivision**

Dear Ms. Alvaro:

I write to you as the attorney for Sunrise Development, LLC ("Sunrise") regarding the Real Estate Purchase Agreement ("Agreement") Sunrise entered into with Quasar Development LLC ("Quasar") in July 2006. Pursuant to the terms of the Agreement, Sunrise agreed to purchase lots from Quasar in the Dunham Place Subdivision ("Subdivision") in Ada County, Idaho.

Section 7(a) of the Agreement requires Quasar to record the final plat for the Subdivision by July 31, 2007 with the Ada County Recorder's Office. In the event Quasar fails to record the final plat by that date, Sunrise has the right to terminate the Agreement and receive a full refund of the \$60,000.00 Earnest Money. Quasar has not recorded the final plat. Sunrise is, therefore, terminating the Agreement without any further obligations to Quasar, and Sunrise demands a full refund of the Earnest Money, pursuant to the terms of Section 7(a).

This letter serves as formal written notice of Sunrise's intent to terminate the Agreement under the terms of Section 7(a) of the Agreement. Please remit a check made payable to Sunrise Development, LLC to my office within the next three (3) business days from the date of this letter.

The 9th & Idaho Center ♦ 225 North 9th Street, Suite 820
P. O. Box 1097 ♦ Boise, Idaho 83701
Phone (208) 331-1170 ♦ Facsimile (208) 331-1529
E-Mail Address: dkrueck@idalaw.com

EXHIBIT
000892

NO. _____
A.M. _____ P.M. 4:30

DEC 14 2010

J. DAVID NAVARRO, Clerk
By J. RANDALL
DEPUTY

Craig L. Meadows, ISB No. 1081
Michelle R. Points, ISB No. 6224
HAWLEY TROXELL ENNIS & HAWLEY LLP
877 Main Street, Suite 1000
P.O. Box 1617
Boise, ID 83701-1617
Telephone: 208.344.6000
Facsimile: 208.954.5252
Email: cmeadows@hawleytroxell.com
mpoints@hawleytroxell.com

Attorneys for Defendants Trout Jones Gledhill Fuhrman
P.A. and David T. Krueck

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

JUSTIN S. REYNOLDS and S. KRISTINE
REYNOLDS; and SUNRISE
DEVELOPMENT, LLC,

Plaintiffs,

vs.

TROUT JONES GLEDHILL FUHRMAN,
P.A.; and DAVID T. KRUECK, individually
and in his capacity as a member of the
Defendant Law Firm,

Defendants.

Case No. CV OC 1004458

MEMORANDUM IN SUPPORT OF
DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT

Defendants Trout Jones Gedhill Fuhrman P.A. and David T. Krueck ("Defendants"), by
and through their counsel of record Hawley Troxell Ennis & Hawley, LLP, and respectfully
submit this Memorandum in Support of their Motion for Summary Judgment, filed concurrently
herewith.

MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT - 1

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I.

NATURE OF THE CASE

This is an attorney malpractice case. Plaintiffs assert that Defendants negligently drafted a certain Real Estate Purchase Agreement which allegedly caused them to lose earnest money in the amount of \$60,000; which Plaintiffs paid to the sellers in the subject transaction.

As set forth below, the statute of limitation has run on any claim Plaintiffs' may have asserted against the Defendants under an attorney malpractice cause of action, and further, Plaintiffs are barred from maintaining this action under the doctrine of judicial estoppel.

This case should be dismissed in its entirety as a matter of law.

II.

UNDISPUTED MATERIAL FACTS

Defendants represented Justin and Kristine Reynolds and Sunrise Development, LLC (collectively "Plaintiffs") in a transaction wherein they wished to purchase certain real property located in Ada County, Idaho, commonly known as the Dunham Place Subdivision ("the Property") from Quasar Development, LLC ("Quasar"). Affidavit of David T. Krueck in Support of Defendants' Motion for Summary Judgment ("Krueck Aff."), ¶ 3.

On or about July 21, 2006, Plaintiffs and the principals of Quasar entered into a Real Estate Purchase Agreement ("Agreement") whereby Plaintiffs agreed to purchase the Property from Quasar under certain terms and conditions. Krueck Aff. ¶ 4, Exh. A.

Pursuant to the terms of the Agreement, Plaintiffs deposited \$60,000 as earnest money, to be applied toward the purchase price for the Property, in the event the parties closed the transaction under the terms of the Agreement. Krueck Aff., ¶ 5. The \$60,000 in earnest money

paid by Plaintiffs was agreed up and was to be used by Quasar for costs incurred in getting the Property through the platting process. *Id.*

Section 7(a) of the Agreement provided that in the event Quasar failed to record the final plat for the Property by July 31, 2007, Plaintiffs had the right to terminate the Agreement and seek a full refund of the earnest money. *Id.*, Exh. A.

Quasar failed to record the plat for the Property by July 31, 2007. Krueck Aff., ¶ 7. On that same date, Mr. Krueck on behalf of Plaintiffs, provided written notice to counsel for Quasar that Plaintiffs terminated the Agreement due to Quasar's failure to record the plat pursuant to the terms of the Agreement, and also demanded a full refund of the \$60,000 paid in earnest money. *Id.*, Exh. B. Quasar did not refund the Plaintiffs' earnest money in response to this demand.

On August 9, 2007 on behalf of Plaintiffs, Mr. Krueck sent a letter to counsel for Quasar again demanding return of Plaintiffs' earnest money. Krueck Aff. ¶ 8, Exh. C. Quasar did not refund the Plaintiffs' earnest money in response to this demand. *Id.*

On August 14, 2007, after receiving no response from Quasar or counsel, Mr. Krueck sent another demand for full refund of Plaintiffs' earnest money. Krueck Aff. ¶ 9, Exh. D. Quasar did not refund the Plaintiffs' earnest money in response to this demand. *Id.*

On September 6, 2007, Mr. Krueck received a letter from counsel for Quasar, along with a proposed promissory note and release agreement, which proposed promissory note provided that Quasar would pay Plaintiffs, or Sunrise Development, LLC, \$60,000 no later than September 17, 2007. Krueck Aff. ¶ 10, Exh. E. The parties could not reach a resolution regarding the terms of the proposed promissory note and release agreement, and no payment was ever made by Quasar. *Id.*

On September 25, 2007, Defendants filed on behalf of Plaintiffs, a Complaint and Demand for Jury Trial as Sunrise Development, LLC v. Quasar Development, LLC, Ada County Case No. CV OC 0717098 (the “Underlying Litigation”). Krueck Aff. ¶ 12, Exh. F. In the Complaint, Plaintiffs asserted that Quasar was *obligated under the terms of the Agreement to fully refund the earnest money to Reynolds on July 31, 2007. Id.*, ¶¶ 14, 15.

On October 25, 2007, Quasar filed its Answer in the Underlying Litigation. Krueck Aff., Exh. G.

On December 4, 2007, Plaintiffs filed a motion for summary judgment. Krueck Aff., ¶ 9. On that same date, the Affidavit of Kristine Reynolds in Support of Motion for Summary Judgment was filed. Krueck Aff., Exh. H. In that affidavit, Ms. Reynolds confirmed that “Sunrise has made numerous written demands to Quasar seeking a refund of the Earnest Money pursuant to the express terms of the Agreement.” *Id.*, ¶ 8 (emphasis added).

In August of 2008, Quasar stipulated to the entry of a Judgment against it (subject to a covenant not to execute) for the full refund amount of \$60,000, in addition to attorney fees and costs incurred by Plaintiffs, for a total amount of \$70,488.81. Krueck Aff, Exh. I.

Plaintiffs incurred substantial attorney fees associated with Quasar’s failure to refund the earnest money upon their termination of the Agreement on July 31, 2007; from that date until the litigation was concluded. Krueck Aff., Exh. J.

III.

STANDARD OF REVIEW

Summary judgment shall be rendered when “the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” I.R.C.P. 56(c). All

facts are viewed in the light most favorable to the nonmoving party. *Boudreau v. City of Wendell*, 147 Idaho 609, 611, 213 P.3d 394, 396 (2009) (citations omitted).

If the moving party challenges an element of the nonmoving party's case on the basis that no genuine issue of material fact exists, the burden shifts to the nonmoving party to come forward with sufficient evidence to create a genuine issue of fact. *Smith v. Meridian Jt. School Dist. No. 2*, 128 Idaho 714, 719, 918 P.2d 583, 588 (1996). A party opposing the summary judgment motion may not rest upon the mere allegations or denials contained in that party's pleadings but, instead, the party's response, by affidavits or otherwise, must set forth specific facts showing that there is a genuine issue for trial. *Id.* A mere scintilla of evidence is insufficient to create a material issue of fact. *Zimmerman v. Volkswagen of America, Inc.*, 128 Idaho 851, 854, 920 P.2d 67, 70 (1996); *Snake River Equip. Co. v. Christensen*, 107 Idaho 541, 549, 691 P.2d 787, 795 (Ct. App. 1984). Summary judgment is appropriate if the pleadings, affidavits, and discovery documents on file with the court demonstrate no material issue of fact such that the moving party is entitled to judgment as a matter of law. *Taylor v. Maile, IV*, 146 Idaho 705, 201 P.3d 1282 (2009); *Zener v. Velde*, 135 Idaho 352, 354, 17 P.3d 296 (Ct. App. 2001).

IV.

ARGUMENT

A. The Statute Of Limitation For Plaintiffs To Assert Any Claim Against Defendants Has Expired.

Plaintiffs filed their Complaint in this case on March 9, 2010. The statute of limitation on Plaintiffs' claim of attorney malpractice commenced to run on July 31, 2007. Therefore, Plaintiffs' claim is barred by the applicable statute of limitation, which is two years.

The statute of limitations on a professional malpractice claim is set forth in Idaho Code § 5-219(4). That section provides that with regard to a malpractice claim, “the statute of limitations . . . expire[s] two years following the occurrence, act or omission complained of, barring fraudulent or knowing concealment of the injury, and will not be extended due to any continuing consequences, resulting damages, or continuing professional relationship.” *Rice v. Litster*, 132 Idaho 897, 899, 980 P.2d 561, 563 (1999) (emphasis added), *see also Lapham v. Stewart*, 137 Idaho 582, 585, 51 P.3d 396, 399 (2002) (“An action to recover damages for professional malpractice must be commenced within two years after the cause of action has accrued.”).

Although the statute purports to create a strict “occurrence” rule for accrual of such an action, the Idaho courts have interpreted the statute to allow for a cause of action to accrue for attorney malpractice once the Plaintiff has suffered “some damage.” *Streib v. Veigel*, 109 Idaho 174, 178, 706 P.2d 63, 67 (1985). *See also Chicoine v. Bignall*, 122 Idaho 487, 835 P.2d 1299 (1992).

“The determination of what constitutes ‘damage’ for purposes of accrual of an action must be decided on the circumstances presented in each individual case.” *Parsons Packing, Inc. v. Massengil*, 140 Idaho 480, 482, 95 P.3d 631, 633 (2004) (citing *Bonz v. Sudweeks*, 119 Idaho 539, 543, 808 P.2d 876, 880 (1991)).

Moreover, the last clause of the statute states, “the limitation period shall not be extended by reason of any continuing consequences or damages resulting therefore or any continuing professional relationship between the injured party and the alleged wrongdoer.” I.C. 5-219(4). The Idaho Court of Appeals reinforced the plain meaning of this provision in *Pichon v. Benjamin*, 108 Idaho 852, 702 P.2d 890 (Ct. App. 1985). In that case, the plaintiff attempted to

argue a theory of a continuing tort. The *Pichon* court held: “Our legislation has expressly rejected the theory of continuing negligence advocated by the Plaintiff. The cause of action accrued for each event of alleged malpractice on the day the event occurred . . . and the Plaintiff had two years from that date (the date of alleged malpractice) to file suit.” *Id.* at 854, 702 P.2d at 892.

Where a single act causes damage for which compensation is claimed, even if those damages are continuing and their full extent unknown, where “some damage” occurs, the statute of limitation accrues. *Lapman*, 137 at 603, 850 P.2d 754. This includes certain situations where attorney fees are paid that are attributable to the alleged malpractice of an attorney. *See Chicoine*, 122 Idaho 487, 835 P.2d 1298 (the existence of damage does not depend on the outcome of the lawsuits, since only ‘some damage’ is necessary for the action to accrue under I.C. § 5-219(4)”).¹

Thus, as soon as a plaintiff has suffered some damage, as a result of an alleged event of malpractice, the statute of limitations begins to accrue and his or her entire claim is barred two years following said the occurrence of said damage.

1. Plaintiffs Suffered “Some Damage” On July 31, 2007.

The Agreement was drafted and thereafter executed by the parties on or about July 31, 2006. Although no action could have been taken to avoid the effect of the alleged negligently drafted Agreement after it was executed by the parties, Plaintiffs did not suffer any damage as a result until Quasar refused to refund the earnest money. *See e.g. Sudweeks*, 139 Idaho at 543,

¹ Unlike certain factual scenarios where the existence of some actual damage depends on the outcome of the lawsuit. *See, e.g. City of McCall v. Buxton*, 146 Idaho 656, 663, 201 P.3d 629, 636 (2009).

808 P.2d at 879 (alleged negligence can cause a plaintiff to conceivably suffer damage, but statute of limitations accrues when plaintiff objectively damaged).

At no time in the underlying case did Quasar take the position that they did not owe Plaintiffs the refund of some portion of the earnest money, rather, Quasar took the position in the underlying litigation that only a portion of the \$60,000 was refundable, and that it only had to actually refund the earnest money to Plaintiffs within a “reasonable” time. Krueck Aff., ¶ 11.²

When Quasar refused to refund Plaintiffs their \$60,000 earnest money payment, on or about July 31, 2007, Reynolds suffered some damage – they expected and did not receive the funds, and the statute of limitation on their claim against Defendants began to accrue on that date.

In addition, Plaintiffs began to incur substantial attorney fees and costs on or about that date due to Quasar’s refusal to refund the earnest money as Defendants commenced with continuous communications with counsel for Quasar regarding the Plaintiffs’ continued demands for the refund. Again, incurring damages in addition to the “refusal to refund” – beginning July 31, 2007.

² As set forth above, Quasar ended up stipulating to a judgment in for the entire principal amount of \$60,000, in addition to the attorney fees and costs Reynolds incurred in the underlying litigation.

2. Plaintiffs Suffered “Some Damage” No Later Than October 25, 2007 When Quasar Filed Its Answer In The Underlying Litigation.

As set forth above, a cause of action accrues when there is objective proof that would support the existence of some actual damage, there is no requirement that a plaintiff have knowledge of the damage, that is, there is no “discovery rule” as it applies to attorney malpractice claims. All that is required is the existence of records showing alleged damage suffered by plaintiff sufficient to constitute accrual of an action. *Bignall and Stewart, supra*.

Notwithstanding the fact that there is no requirement that a plaintiff have knowledge of having suffered from some damage, in this case, not only did the Plaintiffs suffer some damage when Quasar refused to fully refund the earnest money upon Plaintiffs terminating the Agreement – Plaintiffs knew that Quasar’s refusal to make the refund was based on the language of the Agreement on or before October 25, 2007, when Quasar filed its Answer in the Underlying Litigation.

Based on Quasar’s refusal to refund the earnest money pursuant to the terms of the Agreement, Plaintiffs filed a Complaint containing claims of breach of contract and breach of the covenant of good faith and fair dealing. In sum, the Complaint alleged that Plaintiffs were to receive a full refund of the earnest money on July 31, 2007, and despite repeated demands and numerous promises to pay by Quantum, no refund had been made. Kruek Aff., Exh. F, ¶¶ 12, 14.

Quantum filed its Answer in the Underlying Litigation on October 25, 2007. In that answer, the Plaintiffs were put on notice that Quasar denied that the Agreement provided for a “full” refund of the earnest to Plaintiffs immediately upon termination of the Agreement. (Quasar denied paragraphs 16, 17 and 18 of the Complaint which alleged that Quasar was

obligated under the terms of the Agreement to fully refund the earnest money upon Plaintiffs terminating the Agreement).

If Plaintiffs were not put on notice before, they learned no later than October 25, 2007 that Quasar took the position that the terms of the Agreement *did not* provide that Plaintiffs receive a full refund of the earnest money immediately upon Plaintiffs terminating the Agreement, and the Underlying Litigation was pursued by Plaintiffs on that premise.

It is the relevant terms of the Agreement which Plaintiffs claim in this action, were negligently drafted by Defendants. They knew that the terms of the Agreement, from Quasar's perspective, *did not* provide they should receive a full and immediate refund – which, following Plaintiffs rationale, resulted in them having to file the Underlying Litigation.

Notwithstanding the fact that Quasar ultimately received a judgment against Quasar for the full principal amount of the earnest money, the Plaintiffs nevertheless pursued the Underlying Litigation on notice that the terms of the Agreement were the basis of Quasar's defense. In fact, as reflected in Defendant's invoices, the Plaintiffs incurred substantial attorney fees and costs in pursuing a motion for summary judgment beginning in November of 2007, addressing the issues of the amount of refund and the timing of the refund.

Plaintiffs first incurred some damage when Quasar failed to immediately and fully refund their earnest money, and Plaintiffs were certainly made aware of Quasar's reasoning for non-payment when Quasar filed their answer. Plaintiffs cannot be heard to claim that they did not know they incurred some damage or that they were not aware of the alleged "cause" of that damage in the Fall of 2007.

3. **Plaintiffs' Claim That Defendants Negligently Drafted The Terms Of The Agreement Is Barred By The Doctrine Of Judicial Estoppel.**

Plaintiffs asserted in the Underlying Litigation that Quasar was *obligated under the terms of the Agreement to fully refund the earnest money Reynolds on July 31, 2007*. In this case, Plaintiffs assert that Defendants negligently drafted the Agreement and that the Agreement did *not* require any particular time frame for the refund of the earnest money.

The doctrine of judicial estoppel bars Plaintiffs' claim. The doctrine of judicial estoppel prohibits a party from assuming a position in one proceeding and then taking an inconsistent position in a subsequent proceeding. *Indian Springs LLC v. Indian Springs Land Investment, LLC*, 147 Idaho 737, 748, 215 P.3d 457, 468 (2009)(citations omitted).

In *McKay v. Owens*, 130 Idaho 148, 937 P.2d 1222 (1997), the Idaho Supreme Court held that a party who is taking an inconsistent position to a position taken in an underlying action, is estopped from bringing a legal malpractice claim against an attorney who represented them in an underlying action, "when the party maintaining an inconsistent position either did have, or was chargeable with, full knowledge of the attendant facts prior to adopting the initial position." *Id.* at 155, 937 P.2d at 1229.

In *McKay*, the plaintiff, Ms. McKay, brought a legal malpractice action against her attorney and the guardian *ad litem* appointed to represent her child in an underlying medical malpractice action. In the medical malpractice action, the claim was settled, and all parties agreed to the terms of settlement, and the Court approved the settlement. In the legal malpractice action Ms. McKay argued that the settlement was made without her consent and that the settlement amount was insufficient. *Id.* at 149, 937 P.2d at 1223. Specifically, Ms. McKay stated that she was never satisfied with the settlement and that she never really agreed to the

settlement. *Id.* at 150, 937 P.2d 1224. The original attorney, Mr. Bruce Owens, and the guardian *ad litem*, Mr. Howard Manweiller, both filed motions for summary judgment on the basis of judicial estoppel. The District Court granted the respective motions for summary judgment and also ordered Ms. McKay's counsel to pay Mr. Owens' and Mr. Manweiller's attorney fees and computer research costs as a sanction under Idaho Rule of Civil Procedure 11. The Idaho Supreme Court affirmed the District Court's decision to grant the motions for summary judgment based on the doctrine of judicial estoppel.

The Idaho Supreme Court, in surveying decisions from appellate courts from other states, held that judicial estoppel is applicable in the context of legal malpractice claims. *Id.* at 153, 937 P.2d at 1277.³ In *McKay*, the Supreme Court, consistent with the District Court, found that because Ms. McKay, as the litigant, stated in court that she agreed to the settlement, and that her attorney, Mr. Ellis, stated that he agreed with the settlement, she was bound by those statements. Notwithstanding Ms. McKay's representation that "she never really meant to approve the settlement", she nevertheless agreed to the settlement and obtained an advantage as a result of the settlement, therefore, the Supreme Court held, McKay "could not repudiate" her earlier agreement, and by way of her inconsistent position, "obtain recovery from another party, arising out of the same transactions." *Id.* at 155, 937 P.2d 1229.

³ The Idaho Supreme Court noted the following cases: *Brown v. Small*, 825 P.2d 1209 (Mont. 1992) (insured accepted settlement and later sued attorneys for not finding endorsement for additional coverage sooner, judicially estopped from bringing malpractice claim); *Owen v. Knop*, 853 S.W.2d 638 (Tex.App. 1993) (plaintiff claimed she had to take inconsistent position in medical malpractice claim due to her attorney's malpractice in not timely filing preserving her claims, judicially estopped because can't claim that malfeasance of her attorney made her do it); *Winmark v. Miles & Stockbridge*, 674 A.2d 73 (Md. App. 1996) (attorney malpractice claim not listed on bankruptcy schedule, subsequent lawsuit barred by judicial estoppel).

Similarly in this case, the Plaintiffs are taking a position inconsistent with their position taken in the Underlying Litigation.

As set forth above, Plaintiffs asserted in the Underlying Litigation that Quasar was *obligated under the terms of the Agreement to fully refund the earnest money Reynolds on July 31, 2007*. Plaintiffs asserted that a “plain” reading of the Agreement mandated that the refund of the earnest money was due upon Plaintiff’s termination of the Agreement. Ms. Reynolds signed an affidavit wherein she testified that upon providing written notice of termination of the Agreement to Quasar, that Plaintiffs were to obtain a full refund of the earnest money; that demands had been made seeking a full refund of the earnest money “pursuant to the express terms of the Agreement.” Plaintiffs prevailed on their motion for summary judgment to the extent the District Court found that they were entitled to a refund of the full \$60,000 in earnest money. Plaintiffs later reached an agreement with Quasar wherein Quasar stipulated to a judgment for the full amount of earnest money, in addition to Plaintiff’s attorney fees.

Contrary to the position Plaintiffs took in the Underlying Litigation, in this case, Plaintiffs assert that the Agreement was defectively drafted and did not make clear that the full \$60,000 was refundable, and in addition failed to specify any particular time for the refund. *See* Complaint, ¶¶ 5, 6.

A “litigant who obtains a judgment, advantage, or consideration from one party through means of sworn statements is judicially estopped from adopting inconsistent and contrary allegations or testimony, to obtain a recovery or a right against another party, arising out of the same transactions or subject matter.” *Lawrence v. Hutchinson*, 146 Idaho 892, 204 P.3d 532 (2009), *citing Loomis v. Church*, 76 Idaho 87, 277 P.2d 561 (1954).

Clearly the Plaintiffs intended for the Court in the Underlying Litigation to rely on their representations with regard to the “plain meaning” of the terms of the Agreement, and Plaintiffs were granted, in part, their motion for summary judgment, which resulted in Quasar entering into a stipulated judgment for the full amount of the earnest money, as well as Plaintiffs attorney fees and costs. In taking a contrary position in this case, Plaintiffs are “deliberately shifting positions to suit the exigencies of a particular situation” – to support a claim of alleged malpractice against the Defendants. *See Hutchison, supra.*

Plaintiffs claims in this case are barred under the doctrine of judicial estoppel.

DATED THIS 14th day of December, 2010.

HAWLEY TROXELL ENNIS & HAWLEY LLP

By


Michelle R. Points, ISB No. 6224
Attorneys for Defendants Trout Jones Gledhill
Fuhrman P.A. and David T. Krueck

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 14th day of December, 2010, I caused to be served a true copy of the foregoing MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT by the method indicated below, and addressed to each of the following:

Robert C. Huntley
The HUNTLEY LAW FIRM PLLC
815 W. Washington Street
P.O. Box 2188
Boise, ID 83701

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☐ E-mail
☐ Telecopy: 208.388.0234



Michelle R. Points

NO. _____
A.M. _____ P.M. 4:41

FEB 22 2011

CHRISTOPHER D. RICH, Clerk
By STEPHANIE VIDAOK
DEPUTY

Craig L. Meadows, ISB No. 1081
Michelle R. Points, ISB No. 6224
HAWLEY TROXELL ENNIS & HAWLEY LLP
877 Main Street, Suite 1000
P.O. Box 1617
Boise, ID 83701-1617
Telephone: 208.344.6000
Facsimile: 208.954.5252
Email: cmeadows@hawleytroxell.com
mpoints@hawleytroxell.com

Attorneys for Defendants Trout Jones Gledhill
Fuhrman P.A. and David T. Krueck

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

JUSTIN S. REYNOLDS and S. KRISTINE)
REYNOLDS; and SUNRISE)
DEVELOPMENT, LLC,)

Plaintiffs,)

vs.)

TROUT JONES GLEDHILL FUHRMAN,)
P.A.; and DAVID T. KRUECK, individually)
and in his capacity as a member of the)
Defendant Law Firm,)

Defendants.)

Case No. CV OC 1004458

REPLY TO PLAINTIFFS' OPPOSITION
TO DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT

Defendants Trout Jones Gledhill Fuhrman P.A. and David T. Krueck ("Defendants"), by
and through their counsel of record, Hawley Troxell Ennis & Hawley LLP, respectfully submit
this Reply to Plaintiffs' Opposition to Defendants' Motion for Summary Judgment.

REPLY TO PLAINTIFFS' OPPOSITION TO DEFENDANTS'
MOTION FOR SUMMARY JUDGMENT - 1

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This is an attorney malpractice action. Plaintiffs assert that they were damaged due to Defendants negligently drafting the terms of a certain agreement. Defendants assert in the subject Motion for Summary Judgment that (1) the Complaint was not filed within the applicable two year statute of limitations and is therefore time barred; and (2) that Plaintiffs are judicially estopped from claiming in this action that Defendants were negligent in drafting the subject agreement.

I. UNDISPUTED FACTS

Defendants will restate here a portion of the facts contained in their opening “Memorandum In Support of Motion for Summary Judgment” (“Opening Memo”), which facts were not disputed by Plaintiffs, in order to put Defendants following reply in context.

Defendants represented Justin and Kristine Reynolds and Sunrise Development, LLC (collectively “Plaintiffs”) in a transaction wherein they wished to purchase certain real property located in Ada County, Idaho, commonly known as the Dunham Place Subdivision (“the Property”) from Quasar Development, LLC (“Quasar”). Affidavit of David T. Krueck in Support of Defendants’ Motion for Summary Judgment (“Krueck Aff.”), ¶ 3, filed December 14, 2010.

On or about July 21, 2006, Plaintiffs and the principals of Quasar entered into a Real Estate Purchase Agreement (“Agreement”) whereby Plaintiffs agreed to purchase the Property from Quasar under certain terms and conditions. Krueck Aff. ¶ 4, Exh. A.

Pursuant to the terms of the Agreement, Plaintiffs deposited \$60,000 as earnest money, to be applied toward the purchase price for the Property, in the event the parties closed the transaction under the terms of the Agreement. Krueck Aff., ¶ 5.

Section 7(a) of the Agreement provided that in the event Quasar failed to record the final plat for the Property by July 31, 2007, Plaintiffs had the right to terminate the Agreement and seek a full refund of the earnest money. *Id.*, Exh. A.

Quasar failed to record the plat for the Property by July 31, 2007. Krueck Aff., ¶ 7. On that same date, Mr. Krueck on behalf of Plaintiffs, provided written notice to counsel for Quasar that Plaintiffs terminated the Agreement due to Quasar's failure to record the plat pursuant to the terms of the Agreement, and also demanded a full refund of the \$60,000 paid in earnest money. *Id.*, Exh. B. Quasar did not refund the Plaintiffs' earnest money in response to this demand.

Mr. Krueck, on behalf of Plaintiffs, send several letters to counsel for Quasar demanding refund of the earnest money pursuant to the terms of the Agreement. . Krueck Aff. ¶ 8, Exh. C; ¶ 9, Exh. D.

On September 6, 2007, Mr. Krueck received a letter from counsel for Quasar, along with a proposed promissory note and release agreement, which proposed promissory note provided that Quasar would pay Plaintiffs, or Sunrise Development, LLC, \$60,000 no later than September 17, 2007. Krueck Aff. ¶ 10, Exh. E. The parties could not reach a resolution regarding the terms of the proposed promissory note and release agreement, and no payment was ever made by Quasar. *Id.*

On September 25, 2007, Defendants filed on behalf of Plaintiffs, a Complaint and Demand for Jury Trial as Sunrise Development, LLC v. Quasar Development, LLC, Ada County Case No. CV OC 0717098 (the "Underlying Litigation"). Krueck Aff. ¶ 12, Exh. F. In the Complaint, Plaintiffs asserted that Quasar was *obligated under the terms of the Agreement to fully refund the earnest money to Reynolds on July 31, 2007*. *Id.*, ¶¶ 14, 15. Plaintiffs also asserted that they "had been damaged in an amount to be proven at trial, including but not

limited to, the amount of the Earnest Money deposit and other incidental and consequential damages ...” *Id.*, ¶ 19 (emphasis added).

On October 25, 2007, Quasar filed its Answer in the Underlying Litigation. Krueck Aff., Exh. G.

On December 4, 2007, Plaintiffs filed a motion for summary judgment. Krueck Aff., ¶ 9. On that same date, the Affidavit of Kristine Reynolds in Support of Motion for Summary Judgment was filed. Krueck Aff., Exh. H. In that affidavit, Ms. Reynolds confirmed that “Sunrise has made numerous written demands to Quasar seeking a refund of the Earnest Money pursuant to the express terms of the Agreement.” *Id.*, ¶ 8 (emphasis added).

Judge Darla Williamson entered an Order on Plaintiffs’ Motion for Summary Judgment on March 11, 2008. In that Order, Judge Williamson granted Plaintiffs motion regarding the amount due to be refunded (the \$60,000), but denied the motion regarding the timing of the payment of the refund finding there was an issue of fact as to whether a reasonable time had passed for the refund of the earnest money. Affidavit of Plaintiff Justin S. Reynolds in Opposition to Motion for Summary Judgment (“Reynolds Aff.”), Appendix A.

Plaintiffs incurred substantial attorney fees associated with Quasar’s failure to refund the earnest money upon their termination of the Agreement on July 31, 2007; from that date until the litigation was concluded. Krueck Aff., Exh. J.

II.

PLAINTIFFS’ CLAIMS ARE BARRED BY THE STATUTE OF LIMITATIONS

Quasar never disputed in the Underlying Litigation that they owed Plaintiffs some refund, but they nevertheless refused to pay.

However, when Quasar refused to refund Plaintiffs their \$60,000 earnest money payment upon Plaintiffs terminating the Agreement on July 31, 2007, Reynolds suffered some damage – they expected and did not receive the funds, and the statute of limitation on their claim against Defendants began to accrue on that date.¹

In the “Brief of Plaintiffs in Opposition to Defendants’ Motion for Summary Judgment” (“Opposition Memo”), Plaintiffs assert that there was no “actionable negligence” against the Defendants until Judge Williamson entered the Order on Summary Judgment in the Underlying Litigation, which made reference to the Agreement not specifying a specific time in which the refund of earnest money was to be made. Opposition Memo, p. 8.

Plaintiffs assert, referring to Judge Williamson’s Order, that “[u]p until that point in time there was no actionable negligence and no damages incurred upon the Plaintiffs herein could have sued their attorney.” *Id.* This argument is without merit. The negligence Plaintiffs complain about allegedly took place when Defendants drafted the Agreement. All Judge Williamson found was that there was a genuine issue of material fact regarding whether or not a reasonable time had passed from for Quasar to refund the earnest money to Plaintiffs.² Judge

¹ In addition, Plaintiffs began to incur substantial attorney fees and costs on or about that date due to Quasar’s refusal to refund the earnest money as Defendants commenced with continuous communications with counsel for Quasar regarding the Plaintiffs’ continued demands for the refund. Again, incurring damages in addition to the “refusal to refund” – beginning July 31, 2007.

² Judge Williamson specifically stated “[n]ext Plaintiff argues that section 15(l) requires the refund to occur immediately. That section states “time of the essence: all times provided for in this Agreement or in any other instrument or document referred to herein or contemplated hereby, for the performance of any act will be strictly construed, it being agreed that time is of the essence in this Agreement. Defendant counters that 7(a) does not state a specific time for paying the refund, and therefore performance must merely occur in a reasonable time.”

Williamson's ruling has nothing to do with the inquiry this Court must make on this motion, which is when Plaintiffs first suffered some damage – which date has to be the date when Quasar refused to pay the earnest money upon demand – or July 31, 2007.

In asserting the argument that “they didn’t have a claim” until Judge Williamson’s Order, Plaintiffs rely on the case of *City of McCall v. Buxton*, 146 Idaho 656 (2009). Plaintiffs assert that a Plaintiffs had to have their claim “adjudicated” in the Underlying Litigation to trigger the commencement of the statute of limitations. Plaintiffs’ analysis of the findings in *Buxton* are incorrect, and as pointed out in Defendants’ Opening Memo, the facts at issue in this case are clearly distinguishable.

Contrary to Plaintiffs’ assertions, a party does not have to have their claim adjudicated in the underlying case to trigger the statute of limitation for a claim of attorney malpractice, and *Buxton*, 146 Idaho 656, does not support that unqualified proposition.

Defendants do not dispute, for the purpose of this motion, that in certain cases a determination of actual damages will depend upon that outcome of certain litigation, but those cases, as recognized by the Idaho Supreme Court, are fact specific. Where the existence of “some damage” does not depend on the outcome of a lawsuit (such as the facts in this case), the statute of limitations begins to accrue. *See Buxton* at 662, 201 P.3d at 635.

Plaintiffs misconstrue the Idaho Supreme Court’s holding in *Buxton*. There were two distinct rulings in *Buxton*, wherein the City of McCall sued its attorneys based on allegations of negligent advice. Two counts of the City’s complaint were based on allegations of negligent advice by the City’s attorney pertaining to termination of a contract and the withholding of

Id., p. 6. Because the case was settled, the issue of what time period constituted a reasonable

certain payments to contractors. The Idaho Supreme Court held that until there was an outcome of the litigation related to this “advice” on the breach of contract claims, there could not be a determination of damage; that is, the City could have prevailed in the litigation and arguably suffered no damage. *Id.*, 146 Idaho at 663, 201 P.3d at 636. The remaining claim of negligence in *Buxton* had to do with the City attorney advising the City to release a lien against J-U-B Engineering. The Idaho Supreme Court held that the date on which the City of McCall released its lien was the date on which the damage occurred because that was the date on which the City of McCall lost its opportunity to recover against J-U-B Engineering. *Id.* at 663, 201 P.3d at 636.

Here, Plaintiffs attempt to argue that until Judge Williamson entered the Order holding there was an issue of material fact regarding whether or not a reasonable time had passed from the date of Plaintiffs’ letter to Quasar, that they had no cause of action against the Defendants. That is incorrect. This is not a case where a party has to have their claim adjudicated in the underlying case to trigger the statute of limitation for a claim of attorney malpractice, because Plaintiffs suffered damage when Quasar refused to pay the earnest money upon demand by Plaintiffs.

Plaintiffs "raise" several other facts in the Opposition Memo regarding Quasar’s ownership of certain real property and specified time periods and speculative testimony regarding Quasar’s ability at any given time to satisfy a judgment. These “facts” are subject of the motion to strike filed concurrently herewith. Notwithstanding, the facts are completely irrelevant to the motion before the Court. The only facts material to Defendants' motion

time was not resolved.

pertaining to the statute of limitation go to the issue of when Plaintiffs suffered some damage to commence that statute of limitation.

Plaintiffs assert, in sum, that if Defendants would have included a date certain in which the earnest money must have been refunded in the Agreement, that Plaintiffs *would have* recovered funds from Quasar. Plaintiffs' extend that argument by asserting that if there was such a date certain in the Agreement, that Plaintiff's would have obtained a judgment at an earlier date and would have collected on that judgment before Quasar become insolvent. As a preliminary matter (and again, notwithstanding the pending motion to strike) this statement is based on pure speculation. Second, this statement is not relevant to the issue of when Plaintiffs suffered some damage to commence the accrual of the applicable statute of limitation.

This motion does not pertain to whether or not Plaintiffs' believe Defendants were negligent in the drafting of the Purchase and Sale Agreement or what Plaintiffs believe Defendants "should have" inserted in the Agreement. Moreover, it is not relevant to this motion whether Quasar was or was not insolvent at any relevant time; these facts are simply not relevant to the issue of when Plaintiffs suffered some damage in determining when the statute of limitation commenced.³

In addition, Plaintiffs' self-serving (and frankly not very credible) assertion that they "didn't know" Quasar's refusal to pay might be due to the language contained in the Agreement is a red herring. That Plaintiffs were not aware of the "reasoning" behind the non-payment does not negate the fact that they were damaged by the non-payment.

³ Although not pertinent to this motion, a creditor's attorney's liability cannot be measured by the solvency of a third-party debtor at any given time.

Plaintiffs' statement that they "could not have sued their attorney on that date [referring to July 31, 2007] because no one had established that any defect in the Agreement causing Quasar not to return the earnest money" is similarly not relevant to this motion.⁴ Again, Quasar's "reasoning" for not paying Plaintiffs is not relevant to the issue of whether Plaintiff's suffered ascertainable damage to commence the applicable statute of limitations. When Plaintiff's allegedly became "aware" of the issue pertaining to the Agreement regarding timing, Plaintiffs could have filed litigation against Defendants within the applicable statute of limitations, which commenced on or about July 31, 2007.

Plaintiffs suffered some damage when Quasar failed or refused to refund their earnest money upon demand and the Court should make such a finding as a matter of law.

III.

PLAINTIFFS' CLAIMS ARE BARRED BY JUDICIAL ESTOPPEL

As set forth in Defendants Opening Memo, Plaintiffs asserted in the Underlying Litigation that Quasar was *obligated under the terms of the Agreement to fully refund the earnest money Reynolds on July 31, 2007*. In this case, Plaintiffs assert that Defendants negligently drafted the Agreement and that the Agreement did *not* require any particular time frame for the refund of the earnest money.

The doctrine of judicial estoppel bars Plaintiffs' claim. The doctrine of judicial estoppel prohibits a party from assuming a position in one proceeding and then taking an inconsistent

⁴ Judge Williamson did not find there was a "defect" in the Agreement, she only found there was an issue of fact regarding the reasonable time for Quasar to refund the earnest money.

position in a subsequent proceeding. *Indian Springs LLC v. Indian Springs Land Investment, LLC*, 147 Idaho 737, 748, 215 P.3d 457, 468 (2009)(citations omitted).

In the Opposition Memo, Plaintiffs state that “[t]he asserted inconsistent position regards the fact that the failure of Quasar to timely file the plat of the development parcel on or before July 2007 is somehow different than the position now taken.” Opposition Memo, p. 10. Plaintiffs’ statement is incorrect; that is not the “position” Defendants assert is inconsistent. Defendants do not dispute and there is no issue of material fact that the “triggering event” for Quasar to refund Plaintiffs the earnest money payment was failure to file the plat by July 31, 2007. That fact is not at issue.

Plaintiffs go onto assert that “[i]t was not until Judge Williamson ruled that the absence of a definitive end date for the refund became [the] cause of the delay which then resulted in an inability to collect from Quasar.” Opposition Memo, p. 10. This line of argument by Plaintiffs is non-responsive to the argument asserted by Defendants.

Finally Plaintiffs summarize the testimony from a Ylonda Hays (which is also subject of a motion to strike) which opines on the alleged “sufficiency” of the language in the Agreement at issue in this case, speculations regarding property owned by Quasar during the relevant time period, and additional speculative opinions that Plaintiffs “could have expected to recover all or a substantial portion of their earnest money deposit of \$60,000.” Opposition Memo, p. 11. This information, albeit inadmissible, is completely irrelevant to Defendants judicial estoppel argument.

Again, Plaintiffs took the position in the underlying litigation and relied upon the language in the Agreement that “time was of the essence”, and that this term in the Agreement meant that the refund from Quasar was payable upon demand by Plaintiffs; payment was due

immediately. In this case, Plaintiffs are taking an inconsistent position; Plaintiffs assert that there was “no time frame” in which the refund was to be paid to Plaintiffs, that the language of the Agreement was negligently drafted, and that Plaintiffs did not have the right to a refund from Quasar upon demand. Notwithstanding there is no such finding by the Court in the underlying case.

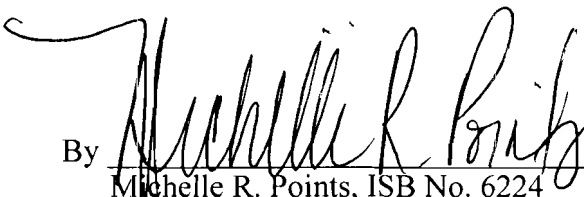
As set forth in the Opening Memo, Plaintiffs intended for the Court in the Underlying Litigation to rely on their representations with regard to the “plain meaning” of the terms of the Agreement, and Plaintiffs were granted, in part, their motion for summary judgment, which resulted in Quasar entering into a stipulated judgment for the full amount of the earnest money, as well as Plaintiffs attorney fees and costs. In taking a contrary position in this case, Plaintiffs are “deliberately shifting positions to suit the exigencies of a particular situation” – to support a claim of alleged malpractice against the Defendants. Such an inconsistent position is barred under the doctrine of judicial estoppel.

Plaintiffs claims in this case are barred under the doctrine of judicial estoppel and the Court should make such a finding as a matter of law.

RESPECTFULLY SUBMITTED THIS  day of February, 2011.

HAWLEY TROXELL ENNIS & HAWLEY LLP

By



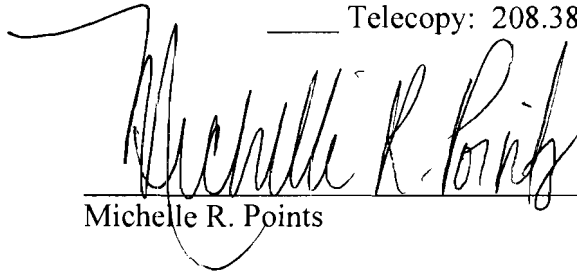
Michelle R. Points, ISB No. 6224
Attorneys for Defendants Trout Jones Gledhill
Fuhrman P.A. and David T. Krueck

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 22nd day of February, 2011, I caused to be served a true copy of the foregoing REPLY TO PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT by the method indicated below, and addressed to each of the following:

Robert C. Huntley
The HUNTLEY LAW FIRM PLLC
815 W. Washington Street
P.O. Box 2188
Boise, ID 83701

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☒ E-mail
☐ Telecopy: 208.388.0234



Michelle R. Points

NO. _____
A.M. _____

FILED _____
P.M. _____

21:24

MAR 14 2011

CHRISTOPHER D. RICH, Clerk
By CARLY LATIMORE
DEPUTY

Craig L. Meadows, ISB No. 1081
Michelle R. Points, ISB No. 6224
HAWLEY TROXELL ENNIS & HAWLEY LLP
877 Main Street, Suite 1000
P.O. Box 1617
Boise, ID 83701-1617
Telephone: 208.344.6000
Facsimile: 208.954.5252
Email: cmeadows@hawleytroxell.com
mpoints@hawleytroxell.com

Attorneys for Defendants Trout Jones Gledhill
Fuhrman P.A. and David T. Krueck

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

JUSTIN S. REYNOLDS and S. KRISTINE)
REYNOLDS; and SUNRISE)
DEVELOPMENT, LLC,)
)
Plaintiffs,)
vs.)
)
TROUT JONES GLEDHILL FUHRMAN,)
P.A.; and DAVID T. KRUECK, individually)
and in his capacity as a member of the)
Defendant Law Firm,)
)
Defendants.)
)

Case No. CV OC 1004458

MOTION FOR AN AWARD OF
ATTORNEY FEES AND COSTS

Defendants Trout Jones Gledhill Fuhrman, P.A. and David Krueck ("Defendants"), by
and through their counsel of record, Hawley Troxell Ennis & Hawley LLP, respectfully submit
this Motion for their attorney fees and costs incurred in defending this matter.

EC

This Motion is brought pursuant to Idaho Rules of Civil Procedure 54(d) and 58, and Idaho Code § 12-120(3).

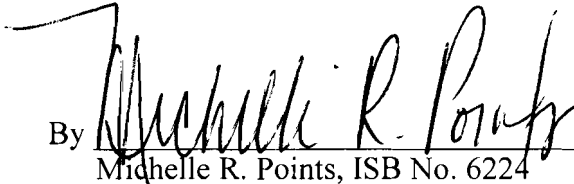
The basis of this Motion is that Defendants are the prevailing party per this Court's order entered from the Bench on February 28, 2011, granting Defendants Motion for Summary Judgment holding that Plaintiffs' Complaint was barred under the applicable statute of limitation.

This Motion is supported by the Affidavit of Michelle R. Points Setting Forth Memorandum of Costs and Attorney Fees and the Memorandum in Support of Motion for Costs and Attorney Fees, both filed concurrently herewith.

DATED THIS 14th day of March, 2011.

HAWLEY TROXELL ENNIS & HAWLEY LLP

By



Michelle R. Points, ISB No. 6224
Attorneys for Defendants Trout Jones Gledhill
Fuhrman P.A. and David T. Krueck

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 14th day of March, 2011, I caused to be served a true copy of the foregoing MOTION FOR AN AWARD OF ATTORNEY FEES AND COSTS by the method indicated below, and addressed to each of the following:

Robert C. Huntley
The HUNTLEY LAW FIRM PLLC
815 W. Washington Street
P.O. Box 2188
Boise, ID 83701

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☐ E-mail
☐ Telecopy: 208.388.0234



Michelle R. Points

NO. _____ FILED _____
A.M. _____ P.M. _____

MAR 14 2011

CHRISTOPHER D. RICH, Clerk
By CARLY LATIMORE
DEPUTY

Craig L. Meadows, ISB No. 1081
Michelle R. Points, ISB No. 6224
HAWLEY TROXELL ENNIS & HAWLEY LLP
877 Main Street, Suite 1000
P.O. Box 1617
Boise, ID 83701-1617
Telephone: 208.344.6000
Facsimile: 208.954.5252
Email: cmeadows@hawleytroxell.com
mpoints@hawleytroxell.com

Attorneys for Defendants Trout Jones Gledhill
Fuhrman P.A. and David T. Krueck

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

JUSTIN S. REYNOLDS and S. KRISTINE)
REYNOLDS; and SUNRISE)
DEVELOPMENT, LLC,)
Plaintiffs,)
vs.)
TROUT JONES GLEDHILL FUHRMAN,)
P.A.; and DAVID T. KRUECK, individually)
and in his capacity as a member of the)
Defendant Law Firm,)
Defendants.)

Case No. CV OC 1004458

AFFIDAVIT OF MICHELLE R. POINTS
SETTING FORTH MEMORANDUM OF
COSTS AND ATTORNEY FEES

MICHELLE R. POINTS, being first duly sworn upon oath, deposes and states as follows:

1. Affiant. I am an attorney with the law firm of Hawley Troxell Ennis & Hawley LLP, which represents Defendants in this action. I am licensed to practice law in the state of Idaho. This affidavit is submitted in support of Defendants' motion for attorney fees and costs,

AFFIDAVIT OF MICHELLE R. POINTS SETTING FORTH
MEMORANDUM OF COSTS AND ATTORNEY FEES - 1

000123
04188.0082.2285004 1

filed concurrently herewith. It is intended to comply with provisions of Idaho Rule of Civil Procedure 54, including but not limited to Idaho Rule of Civil Procedure 54(d)(5) and 54(e)(5).

2. Basis of Affidavit. The matters set forth in this affidavit are based upon my personal knowledge, the work records of my law firm, and a review of those records made by me and other persons with knowledge. The records were made contemporaneously with the events set forth in the records, were made in the ordinary course, and were regularly kept by Hawley Troxell Ennis & Hawley LLP, counsel for Defendants.

3. Fees and Costs Claimed. Accompanying this affidavit is Exhibit A, which itemizes the requested attorney's fees and costs, organized in a manner which details the nature and amount of attorney's fees and costs sought by Defendants, based upon Defendants having successfully defended against all claims asserted by Plaintiffs. I am familiar with the fact of, and the necessity for, such attorney's fees and costs having been incurred in this case. Such fees and costs were actually, necessarily, and reasonably incurred. To the best of my knowledge and belief, the items are correct and the costs claimed are in compliance with Idaho Rule of Civil Procedure 54(d)(5). The attorney's fees claimed are for work actually performed in this action and represent time which relates to claims asserted by Plaintiffs in this litigation against whom Defendants seek recovery of fees and costs. The costs are claimed in compliance with Idaho Rule of Civil Procedure 54(d)(1). Defendants are entitled to attorney fees under Idaho Code § 12-120(3) as Defendants are the prevailing party in this case, the underlying case of which was a commercial transaction.

4. Parties Against Whom Defendants Claim Fees and Costs. Defendants Trout Jones Gledhill Fuhrman P.A. and David T. Krueck seek recovery of fees and costs from Plaintiffs Justin S. Reynolds, S. Kristine Reynolds and Sunrise Development, LLC.

5. Basis for Claim Against Plaintiffs. The basis for Defendants' claim arises from this Court's order entered from the Bench on February 28, 2011, granting Defendants motion for summary judgment holding that Plaintiffs' Complaint was barred under the applicable statute of limitation.

6. Factors Supporting the Reasonableness of Defendants' Claim for Attorney Fees. Factors that the Court should consider in determining the reasonableness of Defendants' claim for attorney fees are set forth in Idaho Rule of Civil Procedure 54(e)(3). Those factors are individually discussed in the following paragraphs of this affidavit.

7. The Time and Labor Required. Idaho Rule of Civil Procedure 54(e)(3)(A) provides that the Court shall consider the time and labor required. There were several characteristics about this case which required substantial time and labor in order to fully and fairly pursue and obtain Defendants' complete defense in this case. In addition, thorough evaluation of client documents, court filings, as well as applicable law was required.

8. The Novelty and Difficulty of the Questions. Idaho Rule of Civil Procedure 54(e)(3)(B) provides that the Court shall consider the novelty and difficulty of the questions. As discussed in the previous paragraph, it was necessary to review several documents and research applicable law to evaluate the case and craft a successful Motion for Summary Judgment.

9. The Skill, Experience and Ability of the Attorney. Idaho Rule of Civil Procedure 54(e)(3)(C) provides that the Court shall consider the skill requisite to perform the legal service properly and the experience and ability of the attorney in the particular field of law. The lawyers primarily involved in this case are: Craig Meadows, ISB No. 1081, Partner, and myself, Michelle R. Points, ISB No. 6224, Partner. Mr. Meadows and I have the requisite skill and experience to properly and efficiently handle this case.

10. The Prevailing Charges. Idaho Rule of Civil Procedure 54(e)(3)(D) provides that the Court shall consider the prevailing charges for like work. Throughout the course of this litigation, I believe that the charges billed for lawyers and litigation assistance staff have been at the prevailing charges for like work.

11. Mandatory Costs. Mandatory costs, as outlined in Idaho Rule of Civil Procedure 54(d)(1)(C) are as follows:

I.R.C.P 54(d)(1)(C)(1) court filing fees:	\$58.00
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12. Discretionary Costs. Discretionary costs, as outlined in Idaho Rule of Civil Procedure 54(d)(1)(D) are as follows:

Photocopies (at 18¢/pg):	\$93.78
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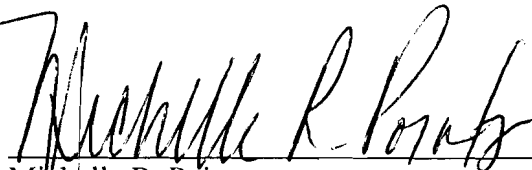
Total	\$151.78
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13. Factors Supporting the Reasonableness of Defendant's Claim for Costs. Defendants are claiming costs as a matter of right pursuant to Idaho Rule of Civil Procedure 54(d)(1)(C), and discretionary costs pursuant to Idaho Rule of Civil Procedure 54(d)(1)(D). The date set forth to each cost, on the exhibit attached hereto, is the date the cost was posted to the accounting records of Hawley Troxell Ennis & Hawley LLP, and not necessarily the date the cost was incurred.

SUMMARY OF COSTS AND ATTORNEY FEES REQUESTED:

Attorney fees	\$6,072.50
Mandatory costs (I.R.C.P 54(d)(1)(C))	\$58.00
Discretionary costs (I.R.C.P 54(d)(1)(D))	\$93.78
Total	\$6,224.28

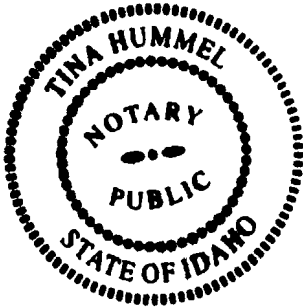
Further your affiant sayeth naught.

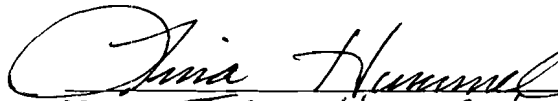


Michelle R. Points

STATE OF IDAHO)
) ss.
County of Ada)

SUBSCRIBED AND SWORN before me this 14th day of March, 2011.





Name: Tina Hummel
Notary Public for Idaho
Residing at Boise, ID 83704
My commission expires June 11, 2015

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 14th day of March, 2011, I caused to be served a true copy of the foregoing AFFIDAVIT OF MICHELLE R. POINTS SETTING FORTH MEMORANDUM OF COSTS AND ATTORNEY FEES by the method indicated below, and addressed to each of the following:

Robert C. Huntley
The HUNTLEY LAW FIRM PLLC
815 W. Washington Street
P.O. Box 2188
Boise, ID 83701

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☐ E-mail
☐ Telecopy: 208.388.0234



Michelle R. Points

Recap of Time Detail



All Entries

Matter Number 04188-0082

Summary Submit

☒ Sort by Date
 ☐ Sort by Timekeeper

☒ Date Worked 3/1/2010

☒ to 3/11/2011

☐ Date Billed

☒ to

First Column

Invoice

Second Column

Date	Timekeeper	Name / Invoice Number	Hours	Amount	Description	Matter Number	Index
11/1/2010	CLM	Craig L. Meadows	1.30	227.50	Receipt and review of file materials from	04188-0082	1541573
12/7/2010		Invoice=239126	1.30	227.50	ALPS; conference with M. Points; e-mail to S. Smith.		
11/1/2010	MPOI	Michelle Points	0.30	45.00	Conference with C. Meadows re various issues	04188-0082	1541584
12/7/2010		Invoice=239126	0.30	45.00	in new case.		
11/2/2010	CLM	Craig L. Meadows	0.80	140.00	E-mail from S. Smith; e-mail to S. Smith; conference with M. Points on issue of potential statute of limitations defense.	04188-0082	1542009
12/7/2010		Invoice=239126	0.80	140.00			
11/2/2010	MPOI	Michelle Points	1.00	150.00	Begin review of client documents; conference with C. Meadows re statute of limitations and other related defenses; pull previous research on "some damage" rule as applied to malpractice statute of limitations statute.	04188-0082	1542103
12/7/2010		Invoice=239126	1.00	150.00			
11/3/2010	MPOI	Michelle Points	0.20	30.00	Call with client re meeting next week.	04188-0082	1543053
12/7/2010		Invoice=239126	0.20	30.00			
11/8/2010	MPOI	Michelle Points	2.90	435.00	Prepare for and attend meeting with client; conference with C. Meadows re proceeding with dispositive motion; draft letter to Plaintiffs' counsel responsive to offer of settlement; draft and edit answer to complaint.	04188-0082	1543447
12/7/2010		Invoice=239126	2.90	435.00			
11/9/2010	MPOI	Michelle Points	1.10	165.00	Draft e-mail to S. Smith re summary of meeting with client and options for proceeding with defense of litigation; revise and edit answer.	04188-0082	1543726
12/7/2010		Invoice=239126	1.10	165.00			
11/11/2010	MPOI	Michelle Points	0.70	105.00	Revise and edit answer and letter to B. Huntley and e-mail to client and S. Smith for	04188-0082	1544726
12/7/2010		Invoice=239126	0.70	105.00	review; finalize for filing and		

					faxing.		
11/21/2010	MPOI	Michelle Points	1.30	195.00	Begin draft of motion, memorandum and affidavit of D. Krueck in support of	04188-0082	1546982
12/7/2010		Invoice=239126	1.30	195.00	Defendants' Motion for Summary Judgment.		
11/23/2010	MPOI	Michelle Points	1.50	225.00	Review client file and pleadings from	04188-0082	1547479
12/7/2010		Invoice=239126	1.50	225.00	underlying case; review order from Court re trial setting and related matters.		
11/28/2010	MPOI	Michelle Points	1.90	285.00	Continue to draft pleadings in support of	04188-0082	1548876
12/7/2010		Invoice=239126	1.90	285.00	motion for summary judgment and designate exhibits to client's affidavit.		
11/29/2010	MPOI	Michelle Points	0.50	75.00	E-mail client re invoice documents and	04188-0082	1548891
12/7/2010		Invoice=239126	0.50	75.00	correspondence from M. Spink; continue to draft affidavit of client in support of motion for summary judgment.		
12/6/2010	MPOI	Michelle Points	1.40	210.00	Designate and copy exhibits for client	04188-0082	1552248
1/5/2011		Invoice=240264	1.40	210.00	affidavit; continue to draft affidavit and portions of memorandum in support of motion for summary judgment.		
12/7/2010	MPOI	Michelle Points	1.30	195.00	Continue to draft and edit memorandum in	04188-0082	1552258
1/5/2011		Invoice=240264	1.30	195.00	support of motion for summary judgment and affidavit of client in support of the same; update research on issue of judicial estoppel.		
12/8/2010	MPOI	Michelle Points	1.50	225.00	Continue to draft and edit memorandum and	04188-0082	1552791
1/5/2011		Invoice=240264	1.50	225.00	affidavit in support of motion for summary judgment; review additional case law re statute of limitation issue.		
12/9/2010	MPOI	Michelle Points	1.90	285.00	Continue to draft and edit memorandum in	04188-0082	1552797
1/5/2011		Invoice=240264	1.90	285.00	support of motion for summary judgment and affidavit from client; brief conference with C. Meadows re review of the same.		
12/10/2010	CLM	Craig L. Meadows	0.80	140.00	Review and revise draft memorandum for	04188-0082	1552826
1/5/2011		Invoice=240264	0.80	140.00	summary judgment; conference with M. Points.		
12/10/2010	MPOI	Michelle Points	1.20	180.00	Brief conference with C. Meadows re summary	04188-0082	1553216

1/5/2011		Invoice=240264	1.20	180.00	judgment brief; revise and edit the same; e-mail the same to client and S. Smith for review.		
12/13/2010	MPOI	Michelle Points	0.40	60.00	Confirm and mark exhibits to client's affidavit; brief review of client's invoices	04188-0082	1553458
1/5/2011		Invoice=240264	0.40	60.00	to Plaintiff for content; prepare all pleadings for filing.		
12/14/2010	MPOI	Michelle Points	0.30	45.00	Review Judge's trial setting order for instructions on filing of motions and copies	04188-0082	1553959
1/5/2011		Invoice=240264	0.30	45.00	to be delivered to chambers and final review and execution of all pleadings in support of motion for summary judgment for filing today.		
12/17/2010	MPOI	Michelle Points	0.40	60.00	Call and exchange e-mails with court clerk re hearing on motion for summary judgment; draft notice of hearing and execute for filing today.	04188-0082	1554766
1/5/2011		Invoice=240264	0.40	60.00			
1/10/2011	MPOI	Michelle Points	0.40	60.00	Exchange e-mails with court clerk and counsel for Plaintiffs re new hearing date on motion for summary judgment; draft amended notice of hearing.	04188-0082	1561964
2/4/2011		Invoice=241193	0.40	60.00			
1/11/2011	MPOI	Michelle Points	0.10	15.00	E-mail client and S. Smith re amended hearing on motion for summary judgment.	04188-0082	1562171
2/4/2011		Invoice=241193	0.10	15.00			
1/19/2011	MPOI	Michelle Points	0.30	45.00	Draft proposed stipulation for scheduling and planning and fax to counsel for Plaintiffs re execution of the same.	04188-0082	1563685
2/4/2011		Invoice=241193	0.30	45.00			
1/20/2011	MPOI	Michelle Points	0.20	30.00	Call from counsel for Plaintiffs re edits to stipulation for scheduling and planning.	04188-0082	1564040
2/4/2011		Invoice=241193	0.20	30.00			
1/21/2011	MPOI	Michelle Points	0.20	30.00	Revise and edit stipulation for scheduling and planning for filing today and fax counsel re the same.	04188-0082	1564472
2/4/2011		Invoice=241193	0.20	30.00			
1/25/2011	MPOI	Michelle Points	0.20	30.00	Follow up with T. Hummel re confirmation of vacated scheduling conference; call from Plaintiffs' counsel re the same.	04188-0082	1565049
2/4/2011		Invoice=241193	0.20	30.00			

Brief review of opposition to

2/16/2011	MPOI	Michelle Points	0.30	45.00	motion for summary judgment; draft e-mail to client re the same.	04188-0082	1571560
3/4/2011		Invoice=242335	0.30	45.00			
2/17/2011	MPOI	Michelle Points	4.70	705.00	Draft and edit reply memorandum on motion for summary judgment; conference with C. Meadows re the same.	04188-0082	1571851
3/4/2011		Invoice=242335	4.70	705.00			
2/18/2011	MPOI	Michelle Points	1.60	240.00	Continue to draft reply on motion for summary judgment and motion and memorandum in support of motion to strike portions of affidavits filed in opposition of motion for summary judgment and e-mail to client for review and comment.	04188-0082	1572279
3/4/2011		Invoice=242335	1.60	240.00			
2/21/2011	MPOI	Michelle Points	0.90	135.00	Continue to draft and edit pleadings re reply on motion for summary judgment, motion to strike and motion for order shortening time.	04188-0082	1572285
3/4/2011		Invoice=242335	1.40	210.00			
2/24/2011	MPOI	Michelle Points	0.70	105.00	Review pleading filed by Plaintiff re non-objection to motion for order shortening time and response to motion to strike; prepare materials to review in preparation for hearing on motion for summary judgment.	04188-0082	1573326
3/4/2011		Invoice=242335	0.70	105.00			
2/27/2011	MPOI	Michelle Points	0.80	120.00	Begin preparation for hearing on motion for summary judgment tomorrow.	04188-0082	1574866
3/4/2011		Invoice=242335	1.00	150.00			
2/28/2011	MPOI	Michelle Points	2.60	390.00	Continue to review relevant case law and briefing in preparation for hearing on motion for summary judgment and present argument at motion hearing; call to client and draft e-mail to S. Smith re ruling from the bench; brief conference with C. Meadows re potential appeal issues.	04188-0082	1575688
3/4/2011		Invoice=242335	2.60	390.00			
3/1/2011	MPOI	Michelle Points	0.70	105.00	Exchange e-mails with counsel for Plaintiffs re drafting of judgment; call from court clerk re clarifications on transcript; begin draft of order and judgment.	04188-0082	1576140
3/2/2011	MPOI	Michelle Points	0.90	135.00	Draft order and judgment based on court's ruling on motion for summary judgment;	04188-0082	1576364

					exchange emails with counsel for Plaintiffs re the same and arrange for filing with court today.		
3/3/2011	MPOI	Michelle Points	0.50	75.00	Obtain information of fees and costs incurred thus far; draft e-mail to client and S. Smith re potential motion for fees and costs.	04188-0082	1576819
3/7/2011	MPOI	Michelle Points	0.30	45.00	Exchange e-mails with S. Smith and client re motion for attorney fees; outline motion, memo and affidavit.	04188-0082	1577307
3/8/2011	MPOI	Michelle Points	1.20	180.00	Draft motion, memorandum and affidavit in support of motion for fees and costs.	04188-0082	1577329
UNBILLED TOTALS:							
WORK:			3.60	540.00	5 records		
UNBILLED TOTALS:							
BILL:			3.60	540.00			
BILLED TOTALS:							
WORK:			35.70	5,427.50	34 records		
BILLED TOTALS:							
BILL:			36.40	5,532.50			
GRAND TOTALS:							
WORK:			39.30	5,967.50	39 records		
GRAND TOTALS:							
BILL:			40.00	6,072.50			

Recap of Cost Detail



All Entries

Matter Number 04188-0082

Summary Submit

☒ Sort by Date
 ☐ Sort by Timekeeper

☒ Date Worked 11/1/2010

 to 3/11/2011

☐ Date Billed

 to

First Column

Invoice

Second Column

Date	Timekeeper	Name / Invoice Number	Code	Rate	Quantity	Amount	Description
11/11/2010	MPOI	Michelle Points	74C	58.00	1.00	58.00	Court Fees - ADA COUNTY CLERK
12/7/2010		Invoice=239126		58.00	1.00	58.00	Filing fee for initial Appearance / Answer to Complaint
		Voucher=191222 Paid					Vendor=ADA COUNTY CLERK Balance= .00 Amount= 58.00 Check #123319 11/11/2010
11/12/2010	HTEH	Hawley Troxell	01C	0.18	15.00	2.70	Copying USER=493 UNIT=5 TIME=13:45 PAGES=15
12/7/2010		Invoice=239126		0.18	15.00	2.70	CLIENT NAME:
12/6/2010	HTEH	Hawley Troxell	01C	0.18	32.00	5.76	Copying USER=111 UNIT=13 TIME=16:00 PAGES=32
1/5/2011		Invoice=240264		0.18	32.00	5.76	CLIENT NAME:
12/13/2010	HTEH	Hawley Troxell	01C	0.18	41.00	7.38	Copying USER=493 UNIT=20 TIME=14:52 PAGES=41
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12/14/2010	HTEH	Hawley Troxell	01C	0.18	190.00	34.20	Copying USER=493 UNIT=5 TIME=14:54 PAGES=190
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12/14/2010	HTEH	Hawley Troxell	01C	0.18	95.00	17.10	Copying USER=493 UNIT=5 TIME=15:34 PAGES=95
1/5/2011		Invoice=240264		0.18	95.00	17.10	CLIENT NAME:
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1/5/2011		Invoice=240264		0.18	6.00	1.08	CLIENT NAME:
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2/4/2011		Invoice=241193		0.18	6.00	1.08	CLIENT NAME:
1/21/2011	HTEH	Hawley Troxell	01C	0.18	4.00	0.72	Copying USER=493 UNIT=5 TIME=15:09 PAGES=4
2/4/2011		Invoice=241193		0.18	4.00	0.72	CLIENT NAME:
1/24/2011	HTEH	Hawley Troxell	01C	0.18	25.00	4.50	Copying USER=493 UNIT=20 TIME=15:10 PAGES=25
2/4/2011		Invoice=241193		0.18	25.00	4.50	CLIENT NAME:
2/1/2011	HTEH	Hawley Troxell	01C	0.18	7.00	1.26	Copying USER=493 UNIT=20 TIME=14:51 PAGES=7
3/4/2011		Invoice=242335		0.18	7.00	1.26	CLIENT NAME:
2/22/2011	HTEH	Hawley Troxell	01C	0.18	90.00	16.20	Copying USER=493 UNIT=20 TIME=13:34 PAGES=90
3/4/2011		Invoice=242335		0.18	90.00	16.20	CLIENT NAME:
3/2/2011	HTEH	Hawley Troxell	01C	0.18	10.00	1.80	Copying USER=493 UNIT=20 TIME=15:07 PAGES=10
							CLIENT NAME:

UNBILLED TOTALS:

WORK:	1.80	1 records
UNBILLED TOTALS:		
BILL:	1.80	
BILLED TOTALS:		
WORK:	149.98	12 records
BILLED TOTALS: BILL:	149.98	
GRAND TOTAL:		
WORK:	151.78	13 records
GRAND TOTAL: BILL:	151.78	

MAR 14 2011

CHRISTOPHER D. RICH, Clerk
By CARLY LATIMORE
DEPUTY

Craig L. Meadows, ISB No. 1081
Michelle R. Points, ISB No. 6224
HAWLEY TROXELL ENNIS & HAWLEY LLP
877 Main Street, Suite 1000
P.O. Box 1617
Boise, ID 83701-1617
Telephone: 208.344.6000
Facsimile: 208.954.5252
Email: cmeadows@hawleytroxell.com
mpoints@hawleytroxell.com

Attorneys for Defendants Trout Jones Gledhill
Fuhrman P.A. and David T. Krueck

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

JUSTIN S. REYNOLDS and S. KRISTINE)
REYNOLDS; and SUNRISE)
DEVELOPMENT, LLC,)
Plaintiffs,)
vs.)
TROUT JONES GLEDHILL FUHRMAN,)
P.A.; and DAVID T. KRUECK, individually)
and in his capacity as a member of the)
Defendant Law Firm,)
Defendants.)

Case No. CV OC 1004458

MEMORANDUM IN SUPPORT OF
MOTION FOR COSTS AND
ATTORNEY FEES

Defendants Trout Jones Gledhill Fuhrman P.A. and David T. Krueck ("Defendants"), by
and through their attorneys of record, Hawley Troxell Ennis & Hawley LLP, submit this
Memorandum in support of their Motion for an Award of Attorney Fees and Costs in connection
with their successful defense of this action.

EC

A. Background

This is a legal malpractice action. Defendants were retained to perform professional legal services as their attorney in the underlying case. Specifically, Plaintiffs assert that Defendants negligently drafted a certain Real Estate Purchase Agreement which allegedly caused them to lose earnest money in the amount of \$60,000; which amount Plaintiffs paid to the sellers in the subject transaction. The sellers did not meet their obligations under the referenced agreement and litigation ensued; Ada County Case No. CV OC 0717098, which was ultimately settled.

This Court's order entered from the Bench on February 28, 2011, granted Defendants' Motion for Summary Judgment holding that Plaintiffs' Complaint was barred under the applicable statute of limitation. For the purpose of an attorney fee and cost determination, Defendants are the prevailing party.

Defendants, through this Motion, request an award of attorney fees and costs incurred in defending against Plaintiffs' claims pursuant to I.R.C.P. 54 as the prevailing party, and I.C. § 12-120(3), as the prevailing party in a commercial transaction.

B. Attorney Fees Must Be Awarded Under I.C. § 12-120(3).

Idaho Code § 12-120(3) provides a basis for an attorney fee award in this case. That statutory provision mandates a fee award in cases based on a "commercial transaction." Before the Idaho Supreme Court's recent decision in *Blimka v. My Web Wholesaler, LLC*, 143 Idaho 723, 152 P.3d 592 (2007), however, section 12-120(3) had been interpreted not to apply in "commercial transaction" cases in which the theory of recovery was a tort theory. In *Blimka*, the court overruled all prior decisions prohibiting fee awards in such cases. *Id.* One decision plainly overruled by *Blimka*, is *Fuller v. Wolters*, 119 Idaho 415, 425, 807 P.2d 633, 643 (1991). There, the court refused to award fees under section 12-120(3) in a legal malpractice case simply

because such a case is a tort case, “even though the underlying transaction which resulted in the malpractice was a ‘commercial transaction.’” *Id.* There is no doubt that the Defendants’ attorney-client relationship with Plaintiffs was a “commercial transaction.” Accordingly, on its face, section 12-120(3) applies, and it mandates an award of attorney fees.

In a recent attorney malpractice case, District Judge McLaughlin held that given the Idaho Supreme Court’s holding in *Blimka, supra*, an attorney fee award was appropriate under I.C. § 12-120(3). Judge McLaughlin’s Decision (*City of McCall v. Buxton, et al.*) is attached hereto as Exhibit A for the Court’s review. Judge McLaughlin specifically held that a contract for attorney services was a commercial transaction, and, “the fact that the contract was for attorney services, not any other service, does not change the nature of the transaction into one for either personal services or household services.” Exhibit A, p. 5.

More recently, District Judge Copsey also held that attorney fees are awardable under I.C. § 12-120(3) to a prevailing party in an attorney malpractice case because the underlying action is based on an attorney-client relationship, a contract to perform professional services. A true and correct copy of Judge Copsey’s decision (*Cady v. Jones, et al.*) is attached hereto as Exhibit B.

Given the clear applicability of I.C. § 12-120(3) to the facts of this case, and because Defendants are the prevailing party, attorney fees should be awarded to Defendants incurred in defending this action.

RESPECTFULLY SUBMITTED THIS 14th day of March, 2011.

HAWLEY TROXELL ENNIS & HAWLEY LLP

By



Michelle R. Points, ISB No. 6224

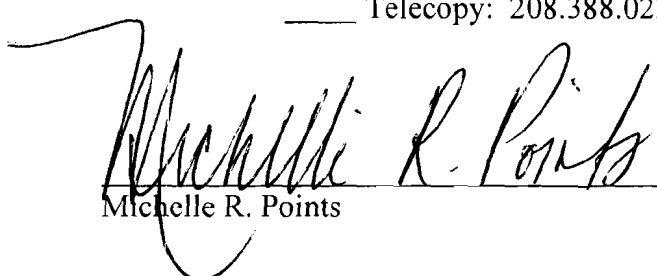
Attorneys for Defendants Trout Jones Gledhill
Fuhrman P.A. and David T. Krueck

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 12th day of March, 2011, I caused to be served a true copy of the foregoing MEMORANDUM IN SUPPORT OF MOTION FOR COSTS AND ATTORNEY FEES by the method indicated below, and addressed to each of the following:

Robert C. Huntley
The HUNTLEY LAW FIRM PLLC
815 W. Washington Street
P.O. Box 2188
Boise, ID 83701

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☐ E-mail
☐ Telecopy: 208.388.0234



Michelle R. Points

OCT - 1 2007

J. DAVID NAVARRO, CLERK
By: *[Signature]*

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

CITY OF MCCALL, a municipal
corporation,

Case No. CVOC0608079

Plaintiff,

vs.

MEMORANDUM DECISION ON
THE DEFENDANTS' MOTION
FOR COSTS AND ATTORNEY
FEES AND PLAINTIFF'S
MOTION TO DISALLOW
ATTORNEY FEES

SUSAN E. BUXTON, MOORE, SMITH,
BUXTON & TRUKE, CHARTERED, a
professional service corporation, WILLIAM
A. MCCURDY and BRASSEY,
WETHERELL, CRAWFORD & GARRETT,
a limited liability partnership,

Defendants.

APPEARANCES

For Plaintiff: Allen B. Ellis of Ellis, Brown & Shells, Chartered and Jeffrey A.
Strother of Strother Law Office for City of McCall

For Defendants: Craig L. Meadows and Jason D. Scott of Hawley Troxell Ennis
& Hawley LLP for Susan E. Buxton and Moore, Smith, Buxton & Turcke,
Chartered

Matthew L. Walters of Elam & Burke, P.A. for William A. McCurdy and Brassey,
Wetherell, Crawford & Garrett

PROCEEDINGS

This matter came before the Court on September 18, 2007 upon the Plaintiff's
Motion to Disallow Fees. Following oral argument by counsel the Court took the matter
under advisement.

EXHIBIT
A

BACKGROUND

This litigation arises out of allegations of legal malpractice by the Defendants. The claims of malpractice allegedly occurred while the Defendants were representing the City of McCall during a course of events leading up to and throughout the litigation involving Employers Insurance of Wausau and the construction of a wastewater storage lagoon. As a result of this alleged malpractice, the Plaintiff commenced this lawsuit on May 3, 2006, filing a Complaint and Demand for Jury Trial. On June 15, 2006, the Plaintiff filed their First Amended Complaint and Demand for Jury Trial. On November 13, 2006, Defendants William A. McCurdy and Brassey, Wetherell, Crawford & Garrett, filed their Answer to First Amended Complaint and Demand for Jury Trial. And on November 14, 2006, Defendants Susan E. Buxton and Moore, Smith, Buxton & Turcke, Chartered filed their Answer to First Amended Complaint and Demand for Jury Trial.

Subsequently, on January 17, 2007, the Court entered an Order Denying Plaintiff's Motion to Hold Matter in Abeyance Pending Completion of Ninth Circuit Appeal and Motion for Protective Order. The Defendants separately filed motions for summary judgment, which the Court granted on June 22, 2007. The Defendants William A. McCurdy and Brassey, Wetherell, Crawford & Garrett filed the present Motion for Costs and Attorney Fees on July 23, 2007. Also on July 23, 2007, the Defendants Susan E. Buxton and Moore, Smith, Buxton & Turcke filed a Memorandum of Costs and Attorney Fees, which was followed by a Supplemental Memorandum asking for an additional \$2,819.00. The Plaintiff filed the present Motion to Disallow Attorney Fees on August 3, 2007. The Plaintiff also requested that the Court reconsider the original decision granting summary judgment and the Court issued a

Memorandum Decision denying the Motion for Reconsideration.

LEGAL STANDARDS

The Plaintiff claims that the Defendants are not entitled to the attorney fees they have requested under the following statutory provisions:

I. Attorney fees for civil action to recover in commercial transaction

A trial court may provide for attorney fees to the prevailing party when there is a nexus between the lawsuit and a commercial transaction, under Idaho Code § 12-120(3). *Continental Cas. Co. v. Brady*, 127 Idaho 830, 835, 907 P.2d 807, 812 (1995). A commercial transaction is defined as any transaction that is not for "personal or household" purposes. Idaho Code § 12-120(3).

II. Attorney fees for claim defended frivolously, unreasonably or without foundation

Under Idaho Code § 12-121, a trial court may award attorney fees to a prevailing party where it finds that the case was "brought, pursued or defended frivolously, unreasonably or without foundation." *Burns v. Baldwin*, 138 Idaho 480, 486, 65 P.3d 502, 508 (2003). However, if any alternative legal basis can be found to support the opposing party's claims, attorney fees are unwarranted under this rule. *Hanf v. Syringa Realty, Inc.*, 120 Idaho 364, 370, 816 P.2d 320, 326 (1991). This determination rests in the sound discretion of the trial court, but any such award "must be supported by findings and those findings, in turn, must be supported by the record." *Sunshine Mining Co. v. Metropolitan Mines Corp.*, 111 Idaho 654, 659, 726 P.2d 766, 771 (1986).

1 **III. Attorney fees for party adverse to a state agency that did not act**
2 **with a reasonable basis in fact or law**

3 Idaho Code § 12-117 provides that if a state agency against whom the
4 judgment is rendered acted "without a reasonable basis in fact or law," the prevailing
5 party shall be awarded attorney fees. Idaho Code § 12-117(1).

6 **DISCUSSION**

7 The fact that the Plaintiff's lawsuit is one in tort, rather than contract, does not
8 mean that the lawsuit is not a "commercial transaction" under Idaho Code § 12-120(3).
9 *Blimka v. My Web Wholesaler, LLC*, 143 Idaho 723, 728-729, 152 P.3d 594, 599-600
10 (2007). Prior to *Blimka*, the Idaho Supreme Court did not award attorney fees for
11 professional malpractice cases because the theory of recovery was in tort. See *Fuller*
12 *v. Wolters*, 119 Idaho 415, 424-425, 807 P.2d 633, 642-643 (1991). Since *Fuller* and
13 the cases that followed no longer bar recovery after *Blimka*, the only issue is whether a
14 contract to provide attorney services is a "commercial transaction."

15 The Idaho Supreme Court has, in dicta, addressed this issue. In *Fuller*, the
16 Court held that "an action for legal malpractice is a tort action, and even though the
17 underlying transaction which resulted in the malpractice was a 'commercial transaction,'
18 attorney fees under 12-120(3) are not authorized." *Id.* at 425, 807 P.2d at 643. This
19 statement by the Court indicates that, *had* the Court been able to award attorney fees
20 under the statute for a tort claim, the Court would have because the underlying
21 transaction – a contract for attorney services – was a commercial one. The Court has
22 articulated this same reasoning in other cases that follow *Fuller*. See *e.g. Brooks v.*
23 *Gigray Ranches, Inc.*, 128 Idaho 72, 79, 910 P.2d 744, 751 (1996).
24

25 The Defendants are the prevailing parties in this action, which is not an issue
26

1 that Plaintiff argues otherwise. The record demonstrates that this transaction is a
2 contract for attorney services and therefore was a commercial transaction. The fact
3 that the contract was for legal services, rather than another type of services, does not
4 change the nature of the transaction into one for either personal services or household
5 services. Since the two requirements set forth in section 12-120(3) have been fulfilled,
6 the Court is compelled to award reasonable attorney fees under that statute.

7 The Defendants have also argued that they are entitled to attorney fees under
8 Idaho Code §§ 12-121 and 12-117. While the Court does not necessarily believe that
9 this lawsuit was without foundation or without a reasonable basis in fact or law, the
10 Court need not continue analysis under either sections 12-121 or 12-117 since attorney
11 fees are both appropriate and required under section 12-120(3).

12 The record does not reflect any objection to the amount of attorney fees or costs
13 claimed by any of the Defendants. The Defendants William A. McCurdy and Brassey,
14 Wetherell, Crawford & Garrett have asked for \$58.00 in costs as a matter of right and
15 \$30,285.00 as reasonable attorney fees. The Defendants Susan E. Buxton and Moore,
16 Smith, Buxton & Turcke have asked for \$58.00 in costs as a matter of right and
17 \$26,731.00 as reasonable attorney fees. Based upon the sworn affidavits of
18 Defendant's counsel the Court finds that the attorney fees incurred by the Defendants
19 were reasonable considering the time and labor involved in this litigation. The Court will
20 award the Defendants these costs and reasonable attorney fees, as requested.

21 CONCLUSION

22 The Court will DENY the Plaintiff's Motion to Disallow Attorney Fees and will
23 award the Defendants William A. McCurdy and Brassey, Wetherell, Crawford & Garrett
24

1 costs as a matter of right in the amount of \$58.00 and reasonable attorney fees in the
2 amount of \$30,285.00. The Court will also award the Defendants Susan E. Buxton and
3 Moore, Smith, Buxton & Turcke costs as a matter of right in the amount of \$58.00 and
4 reasonable attorney fees in the amount of \$26,731.00. Counsel for the Defendant
5 William McCurdy will prepare a judgment with an IRCP 54 (b) certification that comports
6 with the Court's decision.

7 IT IS SO ORDERED.

8 DATED this 28 day of September 2007.

9
10 
11 MICHAEL McLAUGHLIN
12 DISTRICT JUDGE
13
14
15
16
17
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20
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22
23
24
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26

CERTIFICATE OF MAILING

I hereby certify that on the 1st day of October 2007, I mailed (served) a true and correct copy of the within instrument to:

Allen B. Ellis
Ellis Brown & Shells
P.O. Box 388
Boise, ID 83701

Jeffrey A. Strother
Strother Law Office
200 N. 4th St., Ste 30
Boise, ID 83702

Craig Meadows
Hawley Troxell Ennis & Hawley
P.O. Box 1617
Boise, ID 83701

James D. LaRue
Elam & Burke
P.O. Box 1539
Boise, ID 83701

J. DAVID NAVARRO
Clerk of the District Court

By: 

Deputy Clerk

A.M. 10:30 P.M.

SEP 12 2008

J. DAVID NAVARRO, Clerk

By INGA JOHNSON

THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF

THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

STEVEN P. CADY, *et al.*,

Plaintiffs,

vs.

RORY R. JONES, JONES, HESS,
FURHMAN & EIDEN, P.A.

Defendants.

Case No. CV OC-2007-13830

ORDER GRANTING COSTS AND
ATTORNEY FEES

On July 10, 2008, the Court entered final judgment dismissing the Plaintiffs' case with prejudice having granted summary judgment to Rory R. Jones, Jones, Hess, Furhman & Eiden, P.A. that same day. On July 17, 2008, Rory R. Jones, Jones, Hess, Furhman & Eiden, P.A. timely filed their Motion for Attorney Fees and Costs as the prevailing party asking the Court to award attorney fees under I.C. § 12-120(3). The Plaintiffs never replied or opposed. The Court heard argument on August 21, 2008. The Plaintiffs did not appear.

I.R.C.P. 54(e)(6) states that "[a]ny objection to the allowance of attorney fees, or to the amount thereof, shall be made in the same manner as an objection to costs as provided by Rule 54(d)(6)." I.R.C.P. 54(d)(6) provides that "[a]ny party may object to the claimed costs of another party set forth in a memorandum of costs by filing and serving on adverse parties a motion to disallow part or all of such costs within ten days of service of the memorandum of costs.... Failure to timely object to the items in the memorandum of costs shall constitute a waiver of all objections to the costs claimed."

By failing to respond at all or to appear at the oral argument, the Plaintiffs thereby waived their right to further contest the amount of the award of attorney fees. I.R.C.P. 54(e)(6) and 54(d)(6); I.C. § 12-120(3); *Conner v. Dake*, 103 Idaho 761, 653 P.2d 1173, (1982). The Court

ORDER GRANTING COSTS AND ATTORNEY FEES
CASE NO CV OC-2007-13830
1

EXHIBIT
B

000148

1 notes that both the Defendants and the Plaintiffs clearly requested costs and attorney fees in their
2 respective pleadings and that the Defendants requested attorney fees pursuant to I.C. § 12-120(3).

3 Based on the following, in an exercise of discretion, the Court awards \$216.75 in non-
4 discretionary costs¹ and grants an award for attorney fees in the amount of \$19,144.50. The Court
5 denies any award for discretionary costs because the Court does not find these costs
6 extraordinary.²

7 ANALYSIS

8 In Idaho, parties pay their own attorney's fees unless a statute or contract provides
9 otherwise. *Rohr v. Rohr*, 128 Idaho 137, 911 P.2d 133 (1996); *Owner-Operator Independent*
10 *Drivers v. Idaho Public Utilities Com'n*, 125 Idaho 401, 871 P.2d 818 (1994); *Matter of Estate of*
11 *Keeven*, 126 Idaho 290, 882 P.2d 457 (Ct. App. 1994) (also called the "American Rule"). The
12 party who claims attorney fees must present the Court either a statute or contract between the
13 parties permitting such an award; if the party does not point the Court to a statute or contract,
14 attorney fees may be denied. *Fournier v. Fournier*, 125 Idaho 789, 74 P.2d 600 (Ct. App. 1994).

15 Rory R. Jones, Jones, Hess, Fuhman & Eiden, P.A. moved for attorney's fees and costs
16 pursuant to I.C. §12-120(3), I.R.C.P. 54(d)(1)(B) and 54(e)(1). They cite to no other statutory
17 authority in support of the requested fees. They further contend they are the prevailing parties and
18 that the gravamen of the case was a commercial transaction making attorney's fees proper under
19 I.C. §12-120(3).

21 ¹ While the Defendants request an expert witness fee of \$9,320.51 as a cost pursuant to I.R.C.P. 54(d)(1)(C), only
22 expert witness fees may be awarded as a matter of right where the witness either testified at trial or in a deposition and
23 the amount is limited to \$2,000.00. I.R.C.P. 54(d)(1)(C)(8) reads as follows: "Reasonable expert witness fees for
24 an expert who testifies at a deposition or at a trial of an action not to exceed the sum of \$2,000 for each expert
witness for all appearances." (Emphasis added.) Since there is no evidence that Dennis Reinstein either testified at
trial or in a deposition, the Defendants cannot get these costs as a matter of right. If the Defendants provide evidence
that Reinstein testified, the Court will reconsider.

25 ² Rule 54(d)(1)(D) governs discretionary costs and provides in relevant part as follows:

26 Additional items of cost not enumerated in, or in an amount in excess of that listed in subparagraph
27 (C) ["Costs as a Matter of Right"], may be allowed upon a showing that said costs were necessary
28 and exceptional costs reasonably incurred, and should in the interest of justice be assessed against
the adverse party. The trial court, in ruling upon objections to such discretionary costs contained in
the memorandum of costs, shall make express findings as to why such specific item of discretionary
cost should or should not be allowed.

29 The Court recognizes this issue as one of discretion. Although the costs may be reasonable and necessary, the Court
30 cannot find that these are "exceptional" costs as contemplated by the Rule.

1 The Plaintiffs did not oppose. However, the fact that the Plaintiffs failed to timely object
2 does not absolve the Court of its responsibility to independently review the legal basis for the
3 attorney fee award or the amount of the award; whether a statute authorizes an award of fees is a
4 question of law. See *Security Pacific Bank of Idaho, F.S.B. v. Curtis*, 123 Idaho 320, 847 P.2d
5 1181, 1189 (Ct. App. 1993); *Devine v. Cluff*, 110 Idaho 1, 713 P.2d 437 (Ct. App. 1986); *Fearless*
6 *Farris Wholesale, Inc. v. Howell*, 105 Idaho 699, 704, 672 P.2d 577, 582 (Ct. App. 1983).³

7 **A. THE DEFENDANTS ARE THE PREVAILING PARTIES.**

8 The Court finds Defendants are the prevailing parties. The determination as to which
9 party, if any, prevailed is within the Court's discretion. *Holmes*, 125 Idaho at 787, 874 P.2d at
10 598 (Ct. App. 1994) (citing *Badell v. Badell*, 122 Idaho 442, 450, 835 P.2d 677, 685 (Ct.
11 App. 1992)). In determining whether there is a prevailing party, the Court first looks to the Idaho
12 Rules of Civil Procedure. Rule 54(e)(1) incorporates Rule 54(d)(1)(B) which provides in part:

13 In determining which party to an action is a prevailing party and entitled to costs,
14 the trial court shall in its sound discretion consider the final judgment or result of
15 the action in relation to the relief sought by the respective parties, whether there
16 were multiple claims, multiple issues, counterclaims, third party claims, cross-
claims, or other multiple or cross issues between the parties, and the extent to
which each party prevailed upon each of such issue or claims.

17 See also *Jerry J. Joseph C.L.U. Ins. Associates v. Vaught*, 117 Idaho 555, 789 P.2d 1146 (Ct.
18 App. 1990).

19 The Plaintiffs prevailed on no issue, and the Court finds in an exercise of its discretion
20 that Rory R. Jones, Jones, Hess, Furhman & Eiden, P.A. are the prevailing parties in this matter.
21

22
23 ³ In *Fearless Farris*, the court wrote as follows:

24 Failure to timely object to a memorandum of costs and attorney fees constitutes a waiver of the right
25 to contest the requesting party's entitlement to the fees sought. *Conner v. Drake*, 103 Idaho 761,
26 653 P.2d 1173 (1982). *This does not mean the trial court automatically must award the full*
27 *amount specified in the memorandum. See Operating Engineers Local Union 370 v. Goodwin*
28 *Construction Co. of Blackfoot*, 104 Idaho 83, 656 P.2d 144 (Ct. App. 1982). But it does mean that
29 the party who fails to object has waived its right to contest any award within the amount sought.
Therefore, we hold that, having failed to object to *Fearless Farris'* memorandum in support of an
award of attorney fees, the Howells cannot now be heard to complain either concerning the form of
the request or that the court erred in failing to make a written finding as to the basis and reasons for
awarding such fees to *Fearless Farris*.

30 (Emphasis added.)

1 The Court therefore finds they are entitled to a reasonable award of attorney's fees provided a
2 statute applies to its request.

3 **B. THE DEFENDANTS ARE ENTITLED TO ATTORNEY FEES UNDER I.C. §12-
4 120(3).**

5 I.C. § 12-120(3) provides that the prevailing party in an action based upon "any
6 commercial transaction" is entitled to recover attorney fees. The statute defines "commercial
7 transaction" as "all transactions except transactions for personal or household purposes." The test
8 for the application of this section is "whether the commercial transaction comprises the gravamen
9 of the lawsuit, that is, whether the commercial transaction is integral to the claim and constitutes
10 the basis upon which the party is attempting to recover." *Spence v. Howell*, 126 Idaho 763, 776,
11 890 P.2d 714, 717 (1995). The term "commercial transaction" is defined in I.C. §12-120(3) to
12 mean "all transactions except transactions for personal or household purposes." Thus, by the
13 plain terms of the statute, "[w]here a party alleges the existence of a contractual relationship of a
14 type embraced by section 12-120(3), . . . that claim triggers the application of the statute."
15 *Continental Casualty*, 127 Idaho 835, 907 P.2d 812. However, there must also be a nexus
16 between the commercial transaction and the lawsuit:

17 [T]he award of attorney's fees [under § 12-120(3)] is not warranted every time a
18 commercial transaction is remotely connected with the case. Rather, the test is
19 whether the commercial transaction comprises the gravamen of the lawsuit.
20 Attorney's fees are not appropriate under I.C. § 12-120(3) unless the commercial
transaction is integral to the claim, and constitutes the basis upon which the party
is attempting to recover.

21 *Id.* (quoting *Brower v. E.I. DuPont De Nemours and Co.*, 117 Idaho 780, 784, 792 P.2d 345, 349
22 (1990)). This case is a legal malpractice case.

23 In *Fuller v. Wolters*, 119 Idaho 415, 807 P.2d 633 (1991), the Idaho Supreme Court
24 decided "that an action for legal malpractice is a tort action, and even though the underlying
25 transaction which resulted in the malpractice was a 'commercial transaction,' attorney fees under
26 12-120(3) are not authorized." *Id.* at 425, 807 P.2d at 643. The *Fuller* court ruled that "under our
27 present statute, 'tort actions are essentially actions in which the parties bear their own attorney's
28 fees, regardless of [who] prevail[ed].'" *Id.* The *Fuller* rule has been continuously applied to
29 reject claims for attorney fee awards in legal malpractice actions. See *Rice v. Litster*, 132 Idaho
30

1 897, 901, 980 P.2d 561, 565 (1999); *Smith v. David S. Shurtleff & Assoc.*, 124 Idaho 239, 858
2 P.2d 778 (Ct. App.1993).

3 The Defendants cite the recent Supreme Court case, *Blimka v. My Web Wholesaler, LLC*,
4 143 Idaho 723, 152 P.3d 594 (2007), for the proposition that because the underlying relationship
5 between them and the Plaintiffs is a commercial transaction, attorney fees are authorized.
6 However, a close reading of *Blimka* and its recent progeny suggests otherwise. In *Blimka*, the
7 fraud arose in the commercial transaction itself. In *Blimka*, the Supreme Court observed that I.C.
8 § 12-120(3) does not prohibit attorney fees for commercial transactions involving tortious conduct
9 when "the commercial transaction is integral to the claim, and constitutes the basis upon which
10 the party is attempting to recover." *Id.* at 728, 152 P.3d at 599 (quoting *Brower v. E.I. DuPont De*
11 *Nemours & Co.*, 117 Idaho 780, 784, 792 P.2d 345, 349 (1990) (emphasis added)). In this case,
12 the commercial transaction, the parties' attorney client relationship, is integral to the Plaintiffs'
13 claims. Absent an attorney-client relationship, there can be no malpractice claim.

14 The Supreme Court's recent reading of *Blimka* in *Lee v. Nickerson*, __Idaho__, 189 P.3d
15 (2008) suggests that where the nexus of the claim even where it sounds in tort is the relevant
16 inquiry.⁴ In *Lee*, the Nickersons hired Lee to construct a level barn pad and do some work on a
17 pond on their property. Lee filed suit against the Nickersons. Lee's complaint contained claims
18 of breach of contract, unjust enrichment, and implied contract. Lee also filed a \$20,000 tort claim
19 based on the Nickersons' alleged refusal to allow Lee to retrieve his equipment left on the
20 Nickerson's property. The district court entered judgment in favor of the Nickersons after a jury
21 trial. On the question of attorney fees, the district court stated that I.C. §12-120(3) did not entitle
22 the Nickersons to attorney fees on the tort claim. Based on its reading of *Blimka*, the Idaho
23 Supreme Court vacated the district court's award of attorney fees and held that the Nickersons
24 were entitled to reasonable attorney fees relating to their defense of Lee's tort claim. The
25 Supreme Court stated that the commercial transaction, the parties' contract, initiated the presence
26 of Lee's equipment on the Nickerson's property and was integral to Lee's claim.

27
28
29 ⁴ The Court recognizes that the Honorable Judge Michael McLaughlin's decision awarding attorney fees in *City of*
30 *McCall v. Buxton, et al.*, (a legal malpractice case) is currently on appeal.

1 *Lee* seems to create a "but for" standard for determining whether a civil action is "to
2 recover . . . in any commercial transaction" for purposes of I.C. § 12-120(3). In other words, but
3 for the contract or commercial transaction between *Lee* and the Nickersons, *Lee*'s equipment
4 would not have been on the Nickersons' property and no tort could have been committed. Under
5 this standard, most, if not all, legal malpractice claims would fall within the scope of I.C. §12-
6 120(3) since legal malpractice can only occur where the parties have entered into an attorney-
7 client relationship, which most often involves a contract or commercial transaction. In short, *Lee*
8 greatly expands the scope of I.C. § 12-120(3).

9 In this case, the commercial transaction, the contract or attorney-client relationship
10 between the parties, gave rise to the attorney's duties and obligations to his client. But for the
11 underlying contract, no legal malpractice could have occurred. Therefore, Plaintiffs were seeking
12 recovery of damages sustained as a result of a commercial transaction and the prevailing parties,
13 the Defendants, are entitled to attorney fees under I.C. § 12-120(3).

14 The Court finds there was such a nexus. Clearly, the contractual relationship was central
15 to all the Plaintiffs' claims and attorney fees are awardable.

16 **C. ATTORNEYS FEES IN THE AMOUNT OF \$19,144.50 ARE REASONABLE.**

17 The Defendants sought an award of \$19,144.50 in attorney fees. Determining whether the
18 amount of an attorney fee award is reasonable is within the Court's sound discretion. *P.O.*
19 *Ventures, Inc. v. Loucks Family Irrevocable Trust*, 144 Idaho 233, 159 P.3d 870 (2007); *Craft*
20 *Wall of Idaho, Inc. v. Stonebraker*, 108 Idaho 704, 701 P.2d 324 (Ct. App. 1985). What
21 constitutes a reasonable fee is controlled by the criteria of I.R.C.P. 54(e)(3). See *Sanders v.*
22 *Lankford*, 134 Idaho 322, 1 P.3d 823 (Ct. App. 2000); *Kelly v. Hodges*, 119 Idaho 872, 876, 811
23 P.2d 48, 52 (Ct. App. 1991). "These factors are applicable wherever they would not conflict with
24 the contract or statute upon which the award is based. See Rule 54(e)(8)." *Bank of Idaho v.*
25 *Colley*, 103 Idaho 320, 326, 647 P.2d 776, 782 (Ct. App. 1982).

26 The Court is "permitted to examine the reasonableness of the time and labor expended by
27 the attorney under I.R.C.P. 54(e)(3)(A) and need not blindly accept the figures advanced by the
28 attorney." *Craft Wall*, 108 Idaho at 705-706, 701 P.2d at 325. In this case, Cady does not contest
29
30

1 the reasonableness of the claimed attorney fees and, in fact, waived any objection to the amount.
2 However, the Court independently examined the bills.

3 The Court finds that fees charged by each individual attorney given their respective
4 experience and the prevailing fees for similarly experienced attorneys are reasonable. The Court
5 further finds that the number of hours claimed are reasonable.

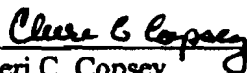
6 After considering all the factors listed in I.R.C.P. 54(e)(3), the Court finds, in its
7 discretion, attorney's fees in the total amount of \$19,144.50 are reasonable fees and awards the
8 Defendants \$19,144.50 in attorney fees.

9 **ORDER**

10 **NOW, THEREFORE, IT IS ORDERED** that Rory R. Jones and Jones, Hess, Fuhman
11 & Eiden, P.A.'s Motion for Costs and Attorney Fees is hereby **GRANTED** and Rory R. Jones and
12 Jones, Hess, Fuhman & Eiden, P.A. are awarded attorney's fees in the amount of \$19,144.50 and
13 costs as a matter of right in the amount of \$216.75.

14 **IT IS SO ORDERED.**

15 Dated this 11th day of September 2008.

16
17 
18 Cheri C. Copsey
19 District Judge
20
21
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30

CERTIFICATE OF MAILING

I hereby certify that on this 12 day of September 2008, I mailed (served) a true and correct copy of the within instrument to:

CHRIST T. TROUPIS
TROUPIS LAW OFFICE
P.O. BOX 2408
EAGLE, IDAHO 83616-9116

R. BRAD MASINGILL
P.O. BOX 467
WEISER, IDAHO 83672

CRAIG L. MEADOWS
MICHELLE R. POINTS
HAWLEY TROXELL ENNIS & HAWLEY LLP
P.O. BOX 1617
BOISE, IDAHO 83701-1617

J. DAVID NAVARRO
Clerk of the District Court


John Weatherby
Deputy Clerk

NO. _____ FILED _____
A.M. _____ P.M. _____

MAR 21 2011

CHRISTOPHER D. RICH, Clerk
By KATHY JOHNSON
DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

JUSTIN S. REYNOLDS and S. KRISTINE
REYNOLDS; and SUNRISE
DEVELOPMENT, LLC,

Plaintiffs,

vs.

TROUT JONES GLEDHILL FUHRMAN,
P.A.; and DAVID T. KRUECK, individually
and in his capacity as a member of the
Defendant Law Firm,

Defendants.

Case No. CV OC 1004458

ORDER

WHEREAS Defendants' Motion for Summary Judgment having been timely filed, the parties having fully briefed the motion, the motion having been heard on oral argument before this Court on February 28, 2011, and based on the findings set forth by the Court on the record at the close of said hearing, the Court finds that Plaintiffs' claims are not barred under the doctrine of judicial estoppel, however, Plaintiffs' claims are barred under the applicable statute of limitation; therefore

IT IS HEREBY ORDERED that Defendants' Motion for Summary Judgment is ^{ROB}
GRANTED in part and denied in part, and Plaintiffs' Complaint is hereby ^{will be} dismissed. ^{by signed order}
DATED THIS 14 day of March, 2011.



DISTRICT JUDGE

CLERK'S CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 21st day of March, 2011, I caused to be served a true copy of the foregoing ORDER by the method indicated below, and addressed to each of the following:


Robert C. Huntley
The HUNTLEY LAW FIRM PLLC
815 W. Washington Street
P.O. Box 2188
Boise, ID 83701

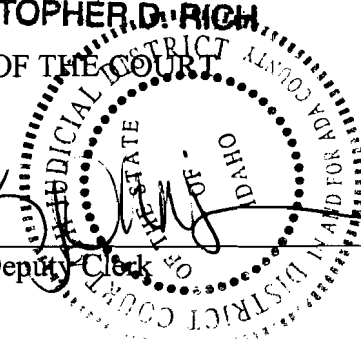
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☐ Hand Delivered
☐ Overnight Mail
☐ E-mail
☐ Telecopy: 208.388.0234

Michelle R. Points
HAWLEY TROXELL ENNIS & HAWLEY LLP
P.O. Box 1617
Boise, ID 83701-1617

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☐ E-mail
☐ Telecopy

CHRISTOPHER D. RICH
CLERK OF THE COURT

By: 
Deputy Clerk



NO. _____ FILED _____
A.M. _____ P.M. _____

MAR 21 2011

CHRISTOPHER D. RICH, Clerk
By KATHY JOHNSON
DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

JUSTIN S. REYNOLDS and S. KRISTINE
REYNOLDS; and SUNRISE
DEVELOPMENT, LLC,

Plaintiffs,

vs.

TROUT JONES GLEDHILL FUHRMAN,
P.A.; and DAVID T. KRUECK, individually
and in his capacity as a member of the
Defendant Law Firm,

Defendants.

Case No. CV OC 1004458

JUDGMENT

Based upon this Court's ruling in granting Defendant's Motion for Summary Judgment,
and good cause appearing therefore, the Court hereby enters judgment as follows:

JUDGMENT IS ENTERED AGAINST Plaintiffs Justin S. Reynolds, S. Kristine
Reynolds and Sunrise Development LLC, and in favor of Trout Jones Gledhill Fuhrman, P.A.
and David T. Krueck, and the Complaint for Demand and Jury Trial and all claims set forth
therein are dismissed with prejudice.

DATED THIS 14 day of March, 2011.


RICHARD D. GREENWOOD, DISTRICT JUDGE

CLERK'S CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 21st day of March, 2011, I caused to be served a true copy of the foregoing JUDGMENT by the method indicated below, and addressed to each of the following:

Robert C. Huntley
The HUNTLEY LAW FIRM PLLC
815 W. Washington Street
P.O. Box 2188
Boise, ID 83701

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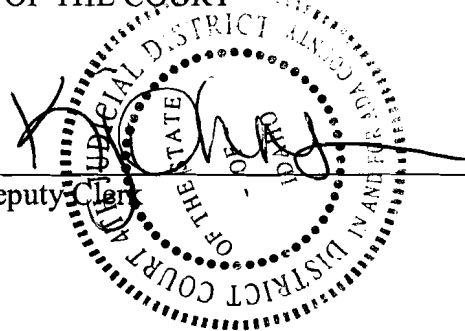
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☐ Hand Delivered
☐ Overnight Mail
☐ E-mail
☐ Telecopy

CHRISTOPHER D. RICH

CLERK OF THE COURT

By: _____

Deputy Clerk



Robert C. Huntley ISB#894
The HUNTLEY LAW FIRM PLLC
815 W. Washington Street
P.O. Box 2188
Boise, Idaho 83701
Telephone: 208-388-1230
Facsimile: 208-388-0234
rhuntley@huntleylaw.com

Attorney for Plaintiffs

NO. 10-42
MAR 28 2011

CHRIS TOPP, D. HIGH, Clerk
By KATHY BIEHL
Deputy

**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

JUSTIN S. REYNOLDS and S. KRISTINE
REYNOLDS; and SUNRISE
DEVELOPMENT LLC,

Plaintiffs,

v.

TROUT JONES GLEDHILL FUHRMAN,
P.A.; and DAVID T. KRUECK, individually
and in his capacity as a member of the
Defendant Law Firm,

Defendants.

Case No. CV OC 2010-04458

**Plaintiffs' Objection to Motion for
Attorney Fees and Costs**

COME NOW the Plaintiffs and enter their response to the Defendants' Motion for Attorney Fees and Costs and follows:

1. The hourly billings rates and hours expended as set forth in the affidavit of Michelle R. Points appear to be reasonable.

2. Plaintiffs advise the Court and Counsel that they are filing a timely request for the Court to Alter or Amend its Judgment to rule for the Plaintiffs and deny the summary judgment

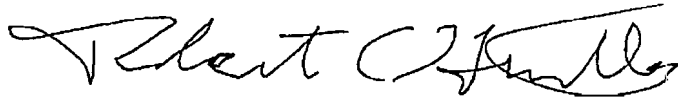
Plaintiffs' Objection to Motion for Attorney Fees and Costs - 1

entered in favor of Defendants, and will be filing an appeal to the Idaho Supreme Court if necessary.

Accordingly, the Defendants are not the prevailing party at this time and until and unless it is finally adjudicated that Defendants are the prevailing party, any execution or attachment for attorney fees will be inappropriate.

DATED this 28th day of March, 2011.

The HUNTLEY LAW FIRM



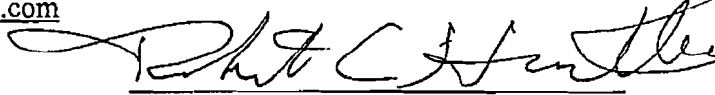
Robert C. Huntley

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 28th day of March 2011, I caused to be served a true copy of the foregoing Plaintiffs' Objection to Motion for Attorney Fees and Costs by the method indicated below, and addressed to each of the following:

Craig L. Meadows and Michelle R. Points
HAWLEY TROXELL ENNIS & HAWLEY LLP
877 Main Street, Suite 1000
P.O. Box 1617
Boise, Idaho 83701-1617
cmeadows@hawleytroxell.com

☐ US Mail
☐ Hand Delivered
☐ Overnight Mail
☒ E-Mail
☒ Fax: 208-954-5252



Robert C. Huntley

NO. _____
A.M. _____ P.M. _____

APR 08 2011

CHRISTOPHER D. RICH, Clerk
By ELYSHIA HOLMES
DEPUTY

Craig L. Meadows, ISB No. 1081
Michelle R. Points, ISB No. 6224
HAWLEY TROXELL ENNIS & HAWLEY LLP
877 Main Street, Suite 1000
P.O. Box 1617
Boise, ID 83701-1617
Telephone: 208.344.6000
Facsimile: 208.954.5252
Email: cmeadows@hawleytroxell.com
mpoints@hawleytroxell.com

Attorneys for Defendants Trout Jones Gledhill
Fuhrman P.A. and David T. Krueck

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

JUSTIN S. REYNOLDS and S. KRISTINE)
REYNOLDS; and SUNRISE)
DEVELOPMENT, LLC,)
Plaintiffs,)
vs.)
TROUT JONES GLEDHILL FUHRMAN,)
P.A.; and DAVID T. KRUECK, individually)
and in his capacity as a member of the)
Defendant Law Firm,)
Defendants.)

Case No. CV OC 1004458

DEFENDANTS' OPPOSITION TO
PLAINTIFFS' MOTION TO ALTER OR
AMEND JUDGMENT

Defendants Trout Jones Gledhill Fuhrman, P.A. and David T. Krueck, by and through
their counsel of record, respectfully submit this memorandum in opposition to Plaintiffs' Motion
to Alter or Amend Judgment, filed on or about April 4, 2011.

DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION TO
ALTER OR AMEND JUDGMENT - 1

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04188.0082.2321357.1

Pursuant to I.R.C.P. 59(e), a district court can correct legal and factual errors occurring in proceedings before it. *Slaathaug v. Allstate Ins. Co.*, 132 Idaho 705, 707, 979 P.2d 107, 109 (1999). In this case, the District Court committed no error in granting Defendants' Motion for Summary Judgment or in entering Judgment dismissing Plaintiffs' Complaint. Therefore, Plaintiffs' motion should be denied.

The basis of Plaintiffs' malpractice claim is that Defendants negligently drafted a certain Real Estate Purchase Agreement ("Agreement"). Specifically, Plaintiffs assert that the language in the Agreement did not provide a date certain that the \$60,000 of earnest money had to be refunded to Plaintiffs by the seller, Quasar Development, LLC ("Quasar") in the event the Agreement was terminated.

When Quasar refused to refund Plaintiffs their \$60,000 earnest money payment upon Plaintiffs terminating the Agreement on July 31, 2007, Reynolds suffered some damage – they expected and did not receive the funds, and the statute of limitation on their claim against Defendants began to accrue on that date.

In addition, Plaintiffs began to incur substantial attorney fees and costs on or about that date due to Quasar's refusal to refund the earnest money as Defendants commenced with continuous communications with counsel for Quasar regarding the Plaintiffs' continued demands for the refund which culminated in Plaintiffs filing litigation against Quasar on September 25, 2007 (the "Underlying Litigation"). Plaintiffs incurred damages in addition to the "refusal to refund" by Quasar – beginning July 31, 2007.

Plaintiffs filed this malpractice action against Defendants on March 9, 2010, well beyond the expiration of the two year statute of limitation.

Plaintiffs raise two issues in their motion to amend the Judgment entered by the Court on March 21, 2011. First, Plaintiffs claim that the statute of limitations on their attorney malpractice claim could not have commenced prior to the Court in the underlying case entering a finding that there was an issue of material fact regarding the timing in which the earnest money had to be refunded. Second, Plaintiffs claim that based on the “principal” of estoppel, Defendants should not be able to assert that Plaintiffs’ claim is barred under the applicable statute of limitations. Both of Plaintiffs arguments are without merit.

A. The Court Properly Applied The Law Regarding The Commencement Of The Statute Of Limitations.

Plaintiffs assert that this Court erred in holding that their claims were barred by the statute of limitations: that statute of limitation could not have commenced prior to the Judge Williamson, in the Underlying Litigation, entering her opinion on partial summary judgment in which she held there was an issue of fact regarding the timing in which the earnest money had to be refunded to Plaintiffs by Quasar.

Plaintiffs assert that they could not have known they had a viable lawsuit against Defendants until that decision was issued and that they are “informed of no Idaho cases which support the proposition that in legal malpractice cases, the two-year statute begins running before the injured client would be able to file a viable suit.” Memorandum in Support of Motion to Alter or Amend Judgment, p. 2.

There are no cases in Idaho that support this proposition because it is not the law in Idaho, as it applies to the commencement of the statute of limitations in an attorney malpractice case. This is the same argument Plaintiffs made in opposition to Defendants’ motion for summary judgment. There is no new argument for this Court to review.

Plaintiff is again confusing the two distinct holdings by the Idaho Supreme Court in *City of McCall v. Buxton*, 146 Idaho 656 (2009). Plaintiffs assert that they had to have their claim “adjudicated” in the Underlying Litigation to trigger the commencement of the statute of limitations. That is, they claim they were not aware they had a viable claim against their attorney until Judge Williamson’s decision was entered. Plaintiffs’ analysis of the findings in *Buxton* are incorrect, and as pointed out in Defendants’ briefing on the motion for summary judgment, the facts at issue in this case are clearly distinguishable.

Defendants do not dispute, for the purpose of this motion, that in certain cases a determination of actual damages will depend upon that outcome of certain litigation, but those cases, as recognized by the Idaho Supreme Court, are fact specific. Where the existence of “some damage” does not depend on the outcome of a lawsuit (such as the facts in this case), the statute of limitations begins to accrue. *See Buxton* at 662, 201 P.3d at 635.

As set forth in Defendants’ Reply brief in support of their Motion for Summary Judgment, there were two distinct rulings in *Buxton*, wherein the City of McCall sued its attorneys based on allegations of negligent advice. Two counts of the City’s complaint were based on allegations of negligent advice by the City’s attorney pertaining to termination of a contract and the withholding of certain payments to contractors. The Idaho Supreme Court held that until there was an outcome of the litigation related to this “advice” on the breach of contract claims, there could not be a determination of damage; that is, the City could have prevailed in the litigation (i.e. no breach of the contract) and arguably suffered no damage. *Id.*, 146 Idaho at 663, 201 P.3d at 636.

The remaining claim of negligence in *Buxton* had to do with the City attorney advising the City to release a lien against J-U-B Engineering. The Idaho Supreme Court held that the date

on which the City of McCall released its lien was the date on which the damage occurred because that was the date on which the City of McCall lost its opportunity to recover against J-U-B Engineering. *Id.* at 663, 201 P.3d at 636.

This Court's ruling is entirely consistent with *City of McCall v. Buxton*. Plaintiffs are only looking at one part of the Idaho Supreme Court's analysis in that case, the part that is not applicable to the facts of this case.

As set forth by Defendants and confirmed by the Court, the facts of this are more closely in line with *Elliot v. Parsons*, 128 Idaho 723, 918 P.2d 592 (1996) and *Parsons Packing, Inc. v. Masingill*, 140 Idaho 480, 95 P.3d 631 (2004).

In *Elliot v. Parsons*, the attorney drafted documents for the Elliots associated with the sale of their business to purportedly obtain favorable installment sales tax treatment. Later, the Internal Revenue Service ("I.R.S") audited the Elliots, concluded that the transactions did not qualify for installment tax treatment and provided notice to the Elliots that a substantial amount of taxes was still owed. *Id.* at 724, 918 P.2d at 593. Thereafter, the Elliotts hired an attorney to appeal the I.R.S decision. In ascertaining when the Elliots incurred some damage, the Idaho Supreme Court held it was when they were assessed unpaid taxes, and when they had to pay an attorney pursue the appeal – not when their appeal was finally denied by the I.R.S.

In *Parsons Packing, Inc. v. Masingill*, the attorney failed to file a U.C.C financing statement in connection with a lease and purchase agreement he had drafted for his client. The purchaser under the agreement made payments for several years, but then filed for bankruptcy and the client was not secured with the U.C.C. filing. The Idaho Supreme Court, in applying the "some damage" rule, held that the seller did not suffer some damage until the purchaser defaulted on payments under the agreement.

Similarly, the Plaintiffs in this case suffered some damage when the Quasar refused to pay Plaintiffs their earnest money upon their demand. They also suffered some damage when they incurred attorney fees in pursuing payment of the earnest money from Quasar.

The statute of limitations does not commence only when a party realizes they might have a claim against their attorney, rather, it commences when they suffer some damage as a result of the attorney's alleged negligence. These are mutually exclusive inquiries, and one is not relevant to the other. The statute of limitations applicable to attorney malpractice claims does not have a discovery exception: it is not material when a plaintiff discovers he might sue his or her attorney, but rather when "some damage" occurs as a result of the alleged negligence. In this case, it was when Quasar did not refund the earnest money upon demand. Plaintiffs have presented no basis on which to amend the Judgment.

B. Defendants' Statute Of Limitation Argument Is Not Barred Under Estoppel.

Plaintiffs assert that because Defendants allegedly "failed to disclose" certain information to them during the course of the Underlying Litigation, that Defendants should be estopped from asserting a statute of limitations defense.

As a preliminary matter, the statements made in the referenced Affidavit of Justin Reynolds, do not approach a claim of estoppel. The elements of equitable estoppel are: (1) a false representation or concealment of a material fact with actual or constructive knowledge of the truth, (2) that the party asserting estoppel did not know or could not discover the truth, (3) that the false representation or concealment was made with the intent to be relied upon, and (4) that the person to whom the representation was made, or from whom the facts were concealed, relied and acted upon the representation or concealment to his or her prejudice. *See Ogden v. Griffith*, 149 Idaho 489, 236 P.3d 1249 (2010).

Mr. Reynolds cannot assert that any representation made to him was false or that any fact was concealed. Mr. Reynolds cannot assert that he didn't know or could not discovered the "truth" (for instance upon review of the pleading file). Mr. Reynolds cannot assert that Defendants intended for him to rely upon any false representation. Nor can Mr. Reynolds assert that he relied upon any false representation or concealment. Plaintiffs' argument simply is without any factual basis whatsoever.

Moreover, the commencement of the statute of limitations is not affected by what the client says - after the fact - about what their attorney told them or allegedly did not tell them during the course of litigation. Nor does Plaintiffs' newly fashioned argument of "unclean hands" provide a defense and/or basis to toll the statute of limitations (nor was such an allegation pled in Plaintiffs' complaint).

It appears that what Plaintiffs be might be attempting to "spin" as "unclean hands" or "estoppel" is really an assertion of fraudulent concealment on the part of Defendants. *See* I.C. § 5-219(4), *McCoy v. Lyons*, 120 Idaho 765, 820 P.2d 360 (1991)(when professional malpractice involves fraudulent or intentional concealment of wrongdoing, the statute of limitations contained in I.C. § 5-219(4) is tolled until the injured party knows or is put on inquiry regarding the matter complained of ... after that date, the statute of limitations period is one year after which an action for professional malpractice is barred). However, there is no fraud claim pled in Plaintiffs' complaint and certainly no facts to substantiate such a claim.

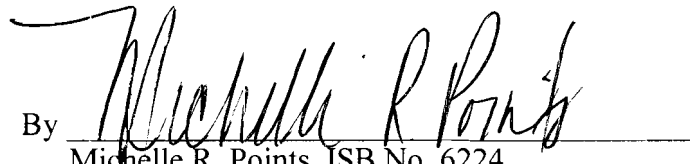
As it applies to the applicable statute of limitations, Plaintiffs knew that Quasar refused to return their earnest money, and they knew that they had to bring litigation (and incur attorney fees in doing so) based on Quasar's continued refusal to pay. There is no issue of fact that Plaintiffs incurred some damage beginning July 31, 2007.

Plaintiffs have cited to no legal authority that would allow this Court the discretion to “estop” Defendants from asserting their claim is barred by the statute of limitations. Plaintiffs have again presented no basis on which to amend the Judgment.

RESPECTFULLY SUBMITTED THIS 8th day of April, 2011.

HAWLEY TROXELL ENNIS & HAWLEY LLP

By



Michelle R. Points, ISB No. 6224

Attorneys for Defendants Trout Jones Gledhill
Fuhrman P.A. and David T. Krueck

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 8th day of April, 2011, I caused to be served a true copy of the foregoing DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION TO ALTER OR AMEND JUDGMENT by the method indicated below, and addressed to each of the following:

Robert C. Huntley
The HUNTLEY LAW FIRM PLLC
815 W. Washington Street
P.O. Box 2188
Boise, ID 83701

☒ U.S. Mail, Postage Prepaid
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Michelle R. Points

NO. _____
A.M. _____ P.M. 1119

MAY 02 2011

CHRISTOPHER D. FICH, Clerk
By ELYSHIA HOLMES
DEPUTY

Craig L. Meadows, ISB No. 1081
Michelle R. Points, ISB No. 6224
HAWLEY TROXELL ENNIS & HAWLEY LLP
877 Main Street, Suite 1000
P.O. Box 1617
Boise, ID 83701-1617
Telephone: 208.344.6000
Facsimile: 208.954.5252
Email: cmeadows@hawleytroxell.com
mpoints@hawleytroxell.com

Attorneys for Defendants Trout Jones Gledhill
Fuhrman P.A. and David T. Krueck

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

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Plaintiffs,

vs.

TROUT JONES GLEDHILL FUHRMAN,
P.A.; and DAVID T. KRUECK, individually
and in his capacity as a member of the
Defendant Law Firm,

Defendants.

Case No. CV OC 1004458

SUPPLEMENTAL AFFIDAVIT OF
MICHELLE R. POINTS SETTING
FORTH MEMORANDUM OF COSTS
AND ATTORNEY FEES

MICHELLE R. POINTS, being first duly sworn upon oath, deposes and states as follows:

On March 14, 2011, I submitted an affidavit setting forth Defendants' Memorandum of Costs and Attorney fees, following the Court's granting Defendant's Motion for Summary Judgment. Plaintiffs then filed a motion for reconsideration of the Court's ruling titled "Motion

SUPPLEMENTAL AFFIDAVIT OF MICHELLE R. POINTS SETTING
FORTH MEMORANDUM OF COSTS AND ATTORNEY FEES - 1

000172

04183.0082.2353904.1

to Alter or Amend Judgment.” At the close of the hearing held April 25, 2011, the Court denied Plaintiffs’ Motion. This affidavit sets forth those costs and fees incurred by Defendants since the time I submitted my original affidavit.

1. Affiant. I am an attorney with the law firm of Hawley Troxell Ennis & Hawley LLP, which represents Defendants in this action. I am licensed to practice law in the state of Idaho. This affidavit is submitted in support of Defendants’ motion for attorney fees and costs, filed March 14, 2011. It is intended to comply with provisions of Idaho Rule of Civil Procedure 54, including but not limited to Idaho Rule of Civil Procedure 54(d)(5) and 54(e)(5).

2. Basis of Affidavit. The matters set forth in this affidavit are based upon my personal knowledge, the work records of my law firm, and a review of those records made by me and other persons with knowledge. The records were made contemporaneously with the events set forth in the records, were made in the ordinary course, and were regularly kept by Hawley Troxell Ennis & Hawley LLP, counsel for Defendants.

3. Fees and Costs Claimed. Accompanying this affidavit is Exhibit A, which itemizes the requested attorney’s fees and costs, organized in a manner which details the nature and amount of attorney’s fees and costs sought by Defendants, based upon Defendants having successfully defended against Plaintiffs’ motion for reconsideration. I am familiar with the fact of, and the necessity for, such attorney’s fees and costs having been incurred in this case. Such fees and costs were actually, necessarily, and reasonably incurred. To the best of my knowledge and belief, the items are correct and the costs claimed are in compliance with Idaho Rule of Civil Procedure 54(d)(5). The attorney’s fees claimed are for work actually performed in this action and represent time which relates to claims opposing Plaintiffs’ motion for reconsideration and related matters. The costs are claimed in compliance with Idaho Rule of Civil Procedure

54(d)(1). Defendants are entitled to attorney fees under Idaho Code § 12-120(3) as Defendants are the prevailing party in this case, the underlying case of which was a commercial transaction.

4. Parties Against Whom Defendants Claim Fees and Costs. Defendants Trout Jones Gledhill Fuhrman P.A. and David T. Krueck seek recovery of fees and costs from Plaintiffs Justin S. Reynolds, S. Kristine Reynolds and Sunrise Development, LLC.

5. Basis for Claim Against Plaintiffs. The basis for Defendants' claim arises from this Court granting Defendants motion for summary judgment holding that Plaintiffs' Complaint was barred under the applicable statute of limitation and denying Plaintiffs' motion for reconsideration of that order.

6. Factors Supporting the Reasonableness of Defendants' Claim for Attorney Fees. Factors that the Court should consider in determining the reasonableness of Defendants' claim for attorney fees are set forth in Idaho Rule of Civil Procedure 54(e)(3). Those factors are individually discussed in the following paragraphs of this affidavit.

7. The Time and Labor Required. Idaho Rule of Civil Procedure 54(e)(3)(A) provides that the Court shall consider the time and labor required. The time and labor expended in responding to Plaintiffs' motion for reconsideration was reasonable. Thorough evaluation of applicable law was required.

8. The Novelty and Difficulty of the Questions. Idaho Rule of Civil Procedure 54(e)(3)(B) provides that the Court shall consider the novelty and difficulty of the questions. As discussed in the previous paragraph, thorough evaluation of applicable law was required in order to draft a successful response.

9. The Skill, Experience and Ability of the Attorney. Idaho Rule of Civil Procedure 54(e)(3)(C) provides that the Court shall consider the skill requisite to perform the legal service properly and the experience and ability of the attorney in the particular field of law. The lawyers primarily involved in this case are: Craig Meadows, ISB No. 1081, Partner, and myself, Michelle R. Points, ISB No. 6224, Partner. Mr. Meadows and I have the requisite skill and experience to properly and efficiently handle this case.

10. The Prevailing Charges. Idaho Rule of Civil Procedure 54(e)(3)(D) provides that the Court shall consider the prevailing charges for like work. Throughout the course of this litigation, I believe that the charges billed for lawyers and litigation assistance staff have been at the prevailing charges for like work.

11. Mandatory Costs. No mandatory costs have been incurred since my previous affidavit.

12. Discretionary Costs. No discretionary costs have been incurred since my previous affidavit:

SUMMARY OF COSTS AND ATTORNEY FEES REQUESTED:

Attorney fees

\$2,880

Further your affiant sayeth naught.




Michelle R. Points

STATE OF IDAHO)
) ss.
County of Ada)

SUBSCRIBED AND SWORN before me this 2nd day of May, 2011.





Name: Karen Ramos
Notary Public for Idaho
Residing at Boise
My commission expires 3.17.2014

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 2nd day of May, 2011, I caused to be served a true copy of the foregoing SUPPLEMENTAL AFFIDAVIT OF MICHELLE R. POINTS SETTING FORTH MEMORANDUM OF COSTS AND ATTORNEY FEES by the method indicated below, and addressed to each of the following:

Robert C. Huntley
The HUNTLEY LAW FIRM PLLC
815 W. Washington Street
P.O. Box 2188
Boise, ID 83701

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☐ E-mail
☐ Telecopy: 208.388.0234



Michelle R. Points

Recap of Time Detail



All Entries

Matter Number 04188-0082

Summary Submit

☒ Sort by Date
 ☐ Sort by Timekeeper

☒ Date Worked 3/9/2011

☐ to 4/29/2011

First Column

☐ Date Worked

☐ to

Invoice

Second Column

Date	Timekeeper	Name / Invoice Number	Hours	Amount	Description	Matter Number	Index
3/13/2011	MPOI	Michelle Points	1.10	165.00	Continue to draft and edit motion, memorandum and affidavit in support of motion for attorney fees and costs.	04188-0082	1578490
4/12/2011		Invoice=243534	1.10	165.00			
3/14/2011	MPOI	Michelle Points	0.30	45.00	Exchange calls and e-mails with counsel for Plaintiff re status of order and judgment; follow up with T. Hummel re call to Judge's clerk.	04188-0082	1578506
4/12/2011		Invoice=243534	0.30	45.00			
3/16/2011	MPOI	Michelle Points	0.40	60.00	Call from counsel for Plaintiff re response to offer of settlement; draft e-mail to J. Reis re the same.	04188-0082	1579033
4/12/2011		Invoice=243534	0.40	60.00			
3/17/2011	MPOI	Michelle Points	0.20	30.00	Exchange e-mails with court clerk re hearing on motion for attorney fees and costs.	04188-0082	1579516
4/12/2011		Invoice=243534	0.20	30.00			
3/18/2011	MPOI	Michelle Points	0.30	45.00	Exchange e-mails with court clerk and Plaintiff's counsel re hearing on motion for attorney fees and costs.	04188-0082	1579787
4/12/2011		Invoice=243534	0.30	45.00			
3/21/2011	MPOI	Michelle Points	0.30	45.00	Exchange e-mails with Plaintiffs counsel and court clerk re hearing on motion for attorney fees; draft notice of hearing.	04188-0082	1580220
4/12/2011		Invoice=243534	0.30	45.00			
3/27/2011	MPOI	Michelle Points	0.30	45.00	Exchange e-mails with counsel for Plaintiff re issues related to timing on entry of judgment and brief review of opposition to motion for fees.	04188-0082	1582200
4/12/2011		Invoice=243534	0.30	45.00			
3/28/2011	MPOI	Michelle Points	0.70	105.00	Exchange e-mails with counsel for Plaintiffs and Judge's clerk throughout day re scheduling for briefing and hearings on motion to reconsider and motion for attorney fees and costs; amended notice of hearing on fee motion.	04188-0082	1582522
4/12/2011		Invoice=243534	0.70	105.00			

EXHIBIT
A

000178

4/4/2011	MPOI	Michelle Points	0.60	90.00	Brief review of motion for reconsideration and forward to client for review; exchange emails with counsel for Plaintiff re the same; e-mail brief status report to client.	04188-0082	1585424
4/5/2011	MPOI	Michelle Points	1.20	180.00	Review and outline memorandum in support of Plaintiffs' motion to alter or amend judgment and outline opposition.	04188-0082	1586122
4/6/2011	MPOI	Michelle Points	1.60	240.00	Continue to draft opposition to Plaintiffs' motion to amend judgment and research case law related to application of Rule 59.	04188-0082	1586355
4/7/2011	MPOI	Michelle Points	3.40	510.00	Continue to draft and edit opposition to Plaintiff's motion to amend judgment.	04188-0082	1586744
4/8/2011	MPOI	Michelle Points	2.60	390.00	Continue to draft and edit opposition to motion to amend judgment and conference with C. Meadows re the same.	04188-0082	1586983
4/11/2011	MPOI	Michelle Points	0.70	105.00	Brief review of issued opinion from Idaho Supreme Court re "some damage" rule applicable to statute of limitations in professional negligence claim and brief conference with C. Meadows re potentially supplementation of materials submitted in opposition to motion to amend judgment.	04188-0082	1587381
4/13/2011	MPOI	Michelle Points	0.70	105.00	Continue to review Stuard v. Jorgenson and conference with C. Meadows re potential supplement to opposition briefing (conclude not to file supplemental briefing).	04188-0082	1588093
4/18/2011	MPOI	Michelle Points	0.80	120.00	Continue to review Plaintiffs' reply brief and outline argument re the same in preparation for hearing next week.	04188-0082	1588693
4/25/2011	MPOI	Michelle Points	3.20	480.00	Review relevant cases and briefing on motion to amend judgment in preparation for hearing on the same this afternoon and attend hearing.	04188-0082	1590342

4/27/2011	MPOI	Michelle Points	0.50	75.00	Draft order on plaintiff's motion to amend judgment and request supplemental information on costs and fees to supplement previous request to the court.	04188-0082	1590849
4/28/2011	MPOI	Michelle Points	0.30	45.00	Finalize order on motion to alter judgment and e-mail to Judge and counsel.	04188-0082	1591450
UNBILLED TOTALS:							
WORK:			15.60	2,340.00	11 records		
UNBILLED TOTALS:							
BILL:			15.60	2,340.00			
BILLED TOTALS:							
WORK:			3.60	540.00	8 records		
BILLED TOTALS:							
BILL:			3.60	540.00			
GRAND TOTALS:							
WORK:			19.20	2,880.00	19 records		
GRAND TOTALS:							
BILL:			19.20	2,880.00			

- 60.00
2,820.00

MAY 18 2011

CHRISTOPHER D. RICH, Clerk
By KATHY JOHNSON
DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

JUSTIN S. REYNOLDS and S. KRISTINE)
REYNOLDS; and SUNRISE)
DEVELOPMENT, LLC,)

Case No. CV OC 1004458

Plaintiffs,)

ORDER

vs.)

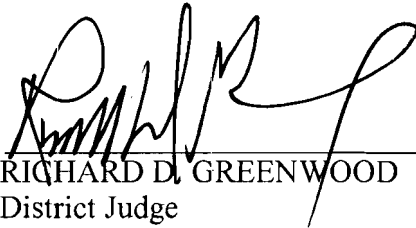
TROUT JONES GLEDHILL FUHRMAN,)
P.A.; and DAVID T. KRUECK, individually)
and in his capacity as a member of the)
Defendant Law Firm,)

Defendants.)

Defendants, having timely filed and supplemented pleadings in support of their motion for attorneys fees and costs pursuant to I.C. § 12-120(3), and upon finding that Defendants are the prevailing parties in this matter, and Plaintiffs, filing no objection to the Defendants' memorandum of attorneys fees and costs,

IT IS HEREBY ORDERED THAT Defendants are awarded fees and costs in the amount of \$9,104.28.

DATED THIS 17 day of May, 2011.



RICHARD D. GREENWOOD
District Judge

CLERK'S CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 10th day of May, 2011, I caused to be served a true copy of the foregoing ORDER by the method indicated below, and addressed to each of the following:

Robert C. Huntley
THE HUNTLEY LAW FIRM PLLC
815 W. Washington Street
P.O. Box 2188
Boise, ID 83701

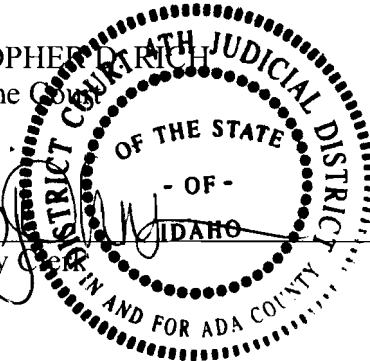
☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☐ E-mail
☐ Telecopy: 208.388.0234

Craig L. Meadows
Michelle R. Points
HAWLEY TROXELL ENNIS & HAWLEY LLP
877 Main Street, Suite 1000
P.O. Box 1617
Boise, ID 83701-1617

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☐ E-mail
☐ Telecopy 208.954.5252

CHRISTOPHER D. RICH
Clerk of the Court

By [Signature]
Deputy Clerk



MAY 18 2011

CHRISTOPHER D. RICH, Clerk
By KATHY JOHNSON
DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

JUSTIN S. REYNOLDS and S. KRISTINE)
REYNOLDS; and SUNRISE)
DEVELOPMENT, LLC,)

Case No. CV OC 1004458

Plaintiffs,)

AMENDED JUDGMENT

vs.)

TROUT JONES GLEDHILL FUHRMAN,)
P.A.; and DAVID T. KRUECK, individually)
and in his capacity as a member of the)
Defendant Law Firm,)

Defendants.)

Based upon this Court's ruling in granting Defendant's Motion for Summary Judgment, and denying Plaintiffs' Motion to Alter or Amend Judgment, and good cause appearing therefore, the Court hereby enters this Amendment Judgment as follows:

JUDGMENT IS ENTERED AGAINST Plaintiffs Justin S. Reynolds, S. Kristine Reynolds and Sunrise Development LLC, and in favor of Trout Jones Gledhill Fuhrman, P.A. and David T. Krueck, and the Complaint for Demand and Jury Trial and all claims set forth therein are dismissed with prejudice.

May 17, 2011


Richard D. Greenwood, District Judge

DATED THIS _____ day of May, 2011.

RICHARD D. GREENWOOD, DISTRICT JUDGE

CLERK'S CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 10th day of May, 2011, I caused to be served a true copy of the foregoing AMENDED JUDGMENT by the method indicated below, and addressed to each of the following:

Robert C. Huntley
The HUNTLEY LAW FIRM PLLC
815 W. Washington Street
P.O. Box 2188
Boise, ID 83701

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
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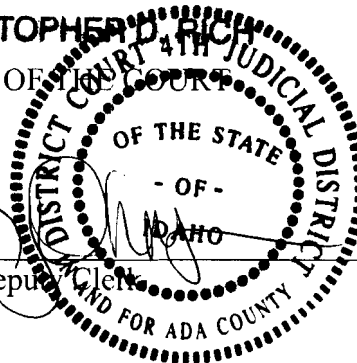
Michelle R. Points
HAWLEY TROXELL ENNIS & HAWLEY LLP
P.O. Box 1617
Boise, ID 83701-1617

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☐ E-mail
☐ Telecopy

CHRISTOPHER D. RICH
CLERK OF DISTRICT COURT

By: _____

Deputy Clerk



MAY 27 2011

CHRISTOPHER D. RICH, Clerk
By KATHY JOHNSON
DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

JUSTIN S. REYNOLDS and S. KRISTINE)
REYNOLDS; and SUNRISE)
DEVELOPMENT, LLC,)

Plaintiffs,)

vs.)

TROUT JONES GLEDHILL FUHRMAN,)
P.A.; and DAVID T. KRUECK, individually)
and in his capacity as a member of the)
Defendant Law Firm,)

Defendants.)

Case No. CV OC 1004458

SECOND AMENDED JUDGMENT

Based upon this Court's ruling in granting Defendant's Motion for Summary Judgment, denying Plaintiffs' Motion to Alter or Amend Judgment, and granting Defendants' Motion for Attorney Fees and Costs and good cause appearing therefore, the Court hereby enters this Amendment Judgment as follows:

JUDGMENT IS ENTERED AGAINST Plaintiffs Justin S. Reynolds, S. Kristine Reynolds and Sunrise Development LLC, and in favor of Trout Jones Gledhill Fuhrman, P.A. and David T. Krueck, and the Complaint for Demand and Jury Trial and all claims set forth therein are dismissed with prejudice and Defendants Trout Jones Gledhill Fuhrman, P.A., and David T. Krueck shall have Judgment against Plaintiffs Justin S. Reynolds and S. Kristine

Reynolds and Sunrise Development, LLC, and each of them in the principal amount of \$9,104.28. Post judgment interest on this amount shall accrue from the date of entry of this Second Amended Judgment by the Court until it is fully and finally satisfied.

DATED THIS 24 day of May, 2011.



RICHARD D. GREENWOOD, DISTRICT JUDGE

CLERK'S CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 27th day of May, 2011, I caused to be served a true copy of the foregoing SECOND AMENDED JUDGMENT by the method indicated below, and addressed to each of the following:

Robert C. Huntley
The HUNTLEY LAW FIRM PLLC
815 W. Washington Street
P.O. Box 2188
Boise, ID 83701

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☐ E-mail
☐ Telecopy: 208.388.0234

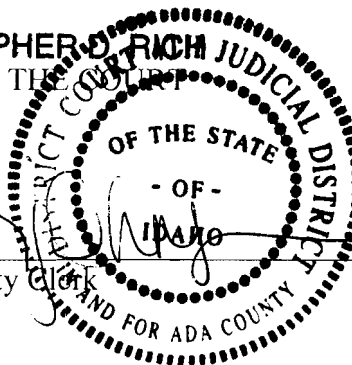
Michelle R. Points
HAWLEY TROXELL ENNIS & HAWLEY LLP
P.O. Box 1617
Boise, ID 83701-1617

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☐ E-mail
☐ Telecopy

CHRISTOPHER D. RICH
CLERK OF THE COURT

By: _____

Deputy Clerk



NO. _____
A.M. _____
ORIGINAL
4/2/11
JUN 27 2011
CHRISTOPHER D. FIDON, Clerk
By LAWRENCE S.
GAGLEY

Donald W. Lojek ISB # 1395
LOJEK LAW OFFICES CHARTERED
623 W. Hays, Ste. B
Boise, Idaho 83702
Telephone: 208.343.7733
Fax: 208.345.0050
Email: lojeklaw@aol.com

Attorney for Plaintiffs/ Appellants

**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

JUSTIN S. REYNOLDS and S. KRISTINE
REYNOLDS; and SUNRISE
DEVELOPMENT LLC,

Plaintiffs/Appellants,

v.

TROUT JONES GLEDHILL FUHRMAN,
P.A.; and DAVID T. KRUECK, individually
and in his capacity as a member of the
Defendant Law Firm,

Defendants/Respondents.

Case No. CV OC 2010-04458

NOTICE OF APPEAL

TO: THE ABOVE-NAMED DEFENDANTS AND THEIR ATTORNEYS, Craig L. Meadows and Michelle R. Points of the firm HAWLEY TROXELL ENNIS & HAWLEY LLP

NOTICE IS HEREBY GIVEN THAT:

1. The above-named Appellants appeal against the above-named Respondents to the Idaho Supreme Court from the Amended Judgment on motion for summary judgment ordering dismissal of Plaintiffs' case, entered on May 18, 2011, attached hereto as Appendix A. Plaintiffs

NOTICE OF APPEAL - 1

000190

also appeal from the Second Amended Judgment filed on May 27, 2011, attached hereto as Appendix B, the Honorable Richard D. Greenwood presiding.

2. The Appellants have the right to appeal to the Idaho Supreme Court, and the judgments and orders described in paragraph 1 are appealable orders under and pursuant to Rule 11(a)(1), I.A.R.

3. **Preliminary statement of the issues on appeal:** The primary issue on appeal is whether the trial court erred in its ruling that the Plaintiffs had not filed their complaint within the period provided by the statute of limitations. A secondary issue is whether the Court erred in awarding attorney fees to the Defendants.

4. No order been entered sealing all or any portion of the record.

5. (a) Is a reporter's transcript requested? Yes

(b) The appellant requests the preparation of the following portions of the reporter's transcript: e.g.

The reporter's standard transcript as defined in Rule 25(c), I.A.R. (This includes the transcription of the oral argument on summary judgment conducted on February 28, 2011 and the oral argument on Motion to Alter or Amend Judgment conducted on May 11, 2011, which latter argument included argument on attorney fees.)

6. The appellant requests the following documents to be included in the clerk's (agency's) record in addition to those automatically included under Rule 28, I.A.R. – **NONE**

Appellants request an electronically scanned Clerk's Record as announced in the May 2011 Advocate article by Michael Henderson.

7. I certify:

(a) that a copy of this notice of appeal has been served on each reporter of whom a transcript has been requested as named below at the address set out below:

Name and address: Francis J. Morris and Leslie Anderson at the offices of Judge Greenwood

(b) (1) [X] That the clerk of the district court or administrative agency has been paid the estimated fee for preparation of the reporter's transcript.

(c) (1) [X] That the estimated fee for preparation of the clerk's or agency's record has been paid.

(d) (1) [X] That the appellate filing fee has been paid.

(e) That service has been made upon all parties required to be served pursuant to Rule 20 (and the attorney general of Idaho pursuant to § 67-1401(1), Idaho Code).

DATED this 27th day of June, 2011

LOJEK LAW OFFICES CHARTERED




Donald W. Lojek
Attorney for the Appellants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 27th day of June 2011, I caused to be served a true copy of the foregoing NOTICE OF APPEAL by the method indicated below, and addressed to each of the following:

Craig L. Meadows and Michelle R. Points
HAWLEY TROXELL ENNIS & HAWLEY LLP
877 Main Street, Suite 1000
P.O. Box 1617
Boise, Idaho 83701-1617
cmeadows@hawleytroxell.com

☒ US Mail
☐ Hand Delivered
☐ Overnight Mail
☒ E-Mail
☐ Fax: 208-954-5252



Donald W. Lojek

JUL 18 2011

CHRISTOPHER D. RICH, Clerk
By JERI HEATON
DEPUTY

Craig L. Meadows, ISB No. 1081
Michelle R. Points, ISB No. 6224
HAWLEY TROXELL ENNIS & HAWLEY LLP
877 Main Street, Suite 1000
P.O. Box 1617
Boise, ID 83701-1617
Telephone: 208.344.6000
Facsimile: 208.954.5252
Email: cmeadows@hawleytroxell.com
mpoints@hawleytroxell.com

Attorneys for Defendants Trout Jones Gledhill
Fuhrman P.A. and David T. Krueck

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

JUSTIN S. REYNOLDS and S. KRISTINE)
REYNOLDS; and SUNRISE)
DEVELOPMENT, LLC,)
)
Plaintiffs,)
vs.)
)
TROUT JONES GLEDHILL FUHRMAN,)
P.A.; and DAVID T. KRUECK, individually)
and in his capacity as a member of the)
Defendant Law Firm,)
)
Defendants.)
)

Case No. CV OC 1004458

REQUEST FOR ADDITIONAL
DOCUMENTS AND TRANSCRIPTS ON
APPEAL

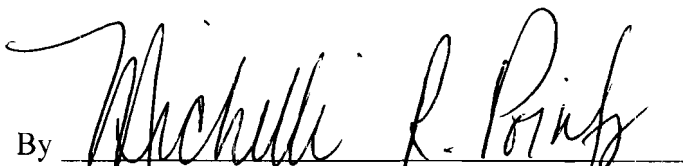
Defendants Trout Jones Gledhill Fuhrman, P.A. and David T. Krueck, by and through
their counsel of record, Hawley Troxell Ennis & Hawley LLP, pursuant to Idaho Appellate
Rule 28(c), respectfully request that the following portions of the recorder's transcripts and
additional pleadings be made part of the record on appeal in this case.

REQUEST FOR ADDITIONAL DOCUMENTS AND TRANSCRIPTS ON APPEAL - 1

1. The reporter's transcript from the hearing on Plaintiffs' Motion to Alter or Amend Judgment, held on April 25, 2011 at 4:00 p.m.
2. Memorandum in Support of Defendants' Motion for Summary Judgment, filed December 14, 2010.
3. Affidavit of David T. Krueck in Support of Defendants' Motion for Summary Judgment, filed December 14, 2010.
4. Reply to Plaintiffs' Opposition to Defendants' Motion for Summary Judgment, filed February 22, 2011.
5. Motion for an Award of Attorney Fees and Costs, filed March 14, 2011.
6. Memorandum in Support of Motion for Costs and Attorney Fees, filed March 14, 2011.
7. Affidavit of Michelle R. Points Setting Forth Memorandum of Costs and Attorney Fees.
8. Order, entered March 21, 2011.
9. Judgment, entered March 21, 2011.
10. Plaintiffs' Objection to Motion for Attorney Fees and Costs.
11. Defendants' Opposition to Plaintiffs' Motion to Alter or Amend Judgment.
12. Order, entered May 18, 2011.
13. Amended Judgment, entered May 18, 2011.
14. Second Amended Judgment, entered May 27, 2011.

DATED THIS 18th day of July, 2011.

HAWLEY TROXELL ENNIS & HAWLEY LLP

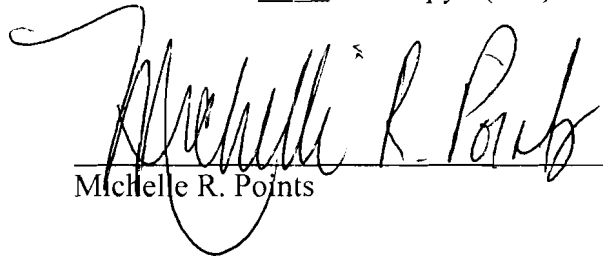
By 
Michelle R. Points, ISB No. 6224
Attorneys for Defendants Trout Jones Gledhill
Fuhrman P.A. and David T. Krueck

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 18th day of July, 2011, I caused to be served a true copy of the foregoing REQUEST FOR ADDITIONAL DOCUMENTS AND TRANSCRIPTS ON APPEAL by the method indicated below, and addressed to each of the following:

Donald W. Lojek
LOJEK LAW OFFICES CHARTERED
623 W. Hays, Suite B
Boise, ID 83702
[Attorney for Plaintiffs]

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☐ E-mail
☐ Telecopy: (208) 345-0050



Michelle R. Points

4:16

Craig L. Meadows, ISB No. 1081
Michelle R. Points, ISB No. 6224
HAWLEY TROXELL ENNIS & HAWLEY LLP
877 Main Street, Suite 1000
P.O. Box 1617
Boise, ID 83701-1617
Telephone: 208.344.6000
Facsimile: 208.954.5252
Email: cmeadows@hawleytroxell.com
mpoints@hawleytroxell.com

Attorneys for Defendants Trout Jones Gledhill
Fuhrman P.A. and David T. Krueck

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

JUSTIN S. REYNOLDS and S. KRISTINE)
REYNOLDS; and SUNRISE)
DEVELOPMENT, LLC,)
)
Plaintiffs,)
vs.)
)
TROUT JONES GLEDHILL FUHRMAN,)
P.A.; and DAVID T. KRUECK, individually)
and in his capacity as a member of the)
Defendant Law Firm,)
)
Defendants.)
)

Case No. CV OC 1004458

AMENDED REQUEST FOR
ADDITIONAL DOCUMENTS AND
TRANSCRIPTS ON APPEAL

Defendants Trout Jones Gledhill Fuhrman, P.A. and David T. Krueck, by and through
their counsel of record, Hawley Troxell Ennis & Hawley LLP, pursuant to Idaho Appellate
Rule 28(c), respectfully request that the following portions of the recorder's transcripts and
additional pleadings be made part of the record on appeal in this case.

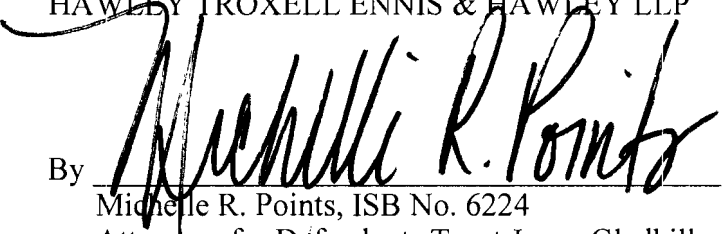
AMENDED REQUEST FOR ADDITIONAL DOCUMENTS AND TRANSCRIPTS ON
APPEAL - 1

1. The reporter's transcript from the hearing on Plaintiffs' Motion to Alter or Amend Judgment, held on April 25, 2011 at 4:00 p.m.; Court Reporter Kim Madsen.
2. Memorandum in Support of Defendants' Motion for Summary Judgment, filed December 14, 2010.
3. Affidavit of David T. Krueck in Support of Defendants' Motion for Summary Judgment, filed December 14, 2010.
4. Reply to Plaintiffs' Opposition to Defendants' Motion for Summary Judgment, filed February 22, 2011.
5. Motion for an Award of Attorney Fees and Costs, filed March 14, 2011.
6. Memorandum in Support of Motion for Costs and Attorney Fees, filed March 14, 2011.
7. Affidavit of Michelle R. Points Setting Forth Memorandum of Costs and Attorney Fees.
8. Order, entered March 21, 2011.
9. Judgment, entered March 21, 2011.
10. Plaintiffs' Objection to Motion for Attorney Fees and Costs.
11. Defendants' Opposition to Plaintiffs' Motion to Alter or Amend Judgment.
12. Order, entered May 18, 2011.
13. Amended Judgment, entered May 18, 2011.
14. Second Amended Judgment, entered May 27, 2011.

DATED THIS 22nd day of July, 2011.

HAWLEY TROXELL ENNIS & HAWLEY LLP

By


Michelle R. Points, ISB No. 6224

Attorneys for Defendants Trout Jones Gledhill
Fuhrman P.A. and David T. Krueck

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 22nd day of July, 2011, I caused to be served a true copy of the foregoing AMENDED AMENDED REQUEST FOR ADDITIONAL DOCUMENTS AND TRANSCRIPTS ON APPEAL by the method indicated below, and addressed to each of the following:

Donald W. Lojek
LOJEK LAW OFFICES CHARTERED
623 W. Hays, Suite B
Boise, ID 83702
[Attorney for Plaintiffs]

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☐ E-mail
☐ Telecopy: (208) 345-0050

Kim Madsen
Court Reporter
200 W Front St.
Boise, ID 83702-7300

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☐ E-mail
☐ Telecopy



Michelle R. Points

Fax: 334-2616

NO. _____
A.M. 8:00 P.M. FILED

AUG 09 2011

In the Supreme Court of the State of Idaho

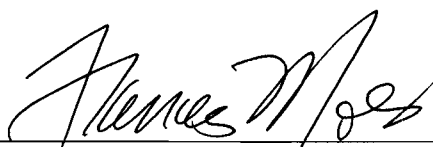
CHRISTOPHER D. RICH, Clerk
By BRADLEY J. THIES
DEPUTY

Justin S. Reynolds, et al.)
Plaintiffs-Appellants)
v)
Trout Jones Gledhill Fuhrman et al)
Defendants-Respondents)

Docket No. 38933-2011

Notice of Transcript Lodged

Notice is hereby given that on July 8, 2011,
I lodged one (1) original and three (3) copies of transcripts 37 pages in length,
as listed below, for the above referenced appeal with
the District Court Clerk of Ada County, Fourth Judicial District.



Frances J. Morris, RPR, CSR No. 696

TRANSCRIPTS LODGED

MSJ – 2/28/11

000201

BT

TO: Clerk of the Court
Idaho Supreme Court
451 West State Street
Boise, Idaho 83720

NO. _____
A.M. 8:00 P.M. _____

AUG 09 2011

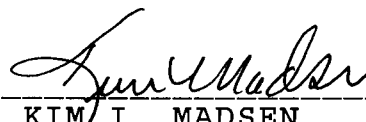
CHRISTOPHER D. RICH, Clerk
By BRADLEY J. THIES
DEPUTY

(
(SC No. 38933
(
(
(REYNOLDS
(
(vs.
(
(TROUT

NOTICE OF TRANSCRIPT LODGED

Notice is hereby given that on July 28, 2011, I
lodged an appeal transcript of 31 pages in length for
the above-referenced appeal with the District Court
Clerk of the County of Ada in the 4th Judicial
District

This transcript contains hearings held on
.....April 25, 2011


KIM I. MADSEN
Ada County Courthouse
200 West Front Street
Boise, Idaho 83702
(208) 287-7583

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

JUSTIN S. REYNOLDS and S. KRISTINE
REYNOLDS; and SUNRISE
DEVELOPMENT, LLC,

Plaintiffs-Appellants,

vs.

TROUT JONES GLEDHILL FUHRMAN,
P.A.; and DAVID T. KRUECK,
individually and in his capacity as a
member of the Defendant Law Firm,

Defendants-Respondents.

Supreme Court Case No. 38933


CERTIFICATE OF EXHIBITS

I, CHRISTOPHER D. RICH, Clerk of the District Court of the Fourth Judicial District of
the State of Idaho in and for the County of Ada, do hereby certify:

There were no exhibits offered for identification or admitted into evidence during the
course of this action.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said
Court this 10th day of August, 2011.

CHRISTOPHER D. RICH
Clerk of the District Court

By 
Deputy Clerk

CERTIFICATE OF EXHIBITS

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

JUSTIN S. REYNOLDS and S. KRISTINE
REYNOLDS; and SUNRISE
DEVELOPMENT, LLC,

Plaintiffs-Appellants,

vs.

TROUT JONES GLEDHILL FUHRMAN,
P.A.; and DAVID T. KRUECK,
individually and in his capacity as a
member of the Defendant Law Firm,

Defendants-Respondents.

Supreme Court Case No. 38933

CERTIFICATE OF SERVICE

I, CHRISTOPHER D. RICH, the undersigned authority, do hereby certify that I have
personally served or mailed, by either United States Mail or Interdepartmental Mail, one copy of
the following:

CLERK'S RECORD AND REPORTER'S TRANSCRIPT

to each of the Attorneys of Record in this cause as follows:

DONALD W. LOJEK

ATTORNEY FOR APPELLANT

BOISE, IDAHO


MICHELLE R. POINTS

ATTORNEY FOR RESPONDENT

BOISE, IDAHO

CHRISTOPHER D. RICH
Clerk of the District Court

Date of Service: AUG 10 2011

By 
Deputy Clerk

CERTIFICATE OF SERVICE

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

JUSTIN S. REYNOLDS and S. KRISTINE
REYNOLDS; and SUNRISE
DEVELOPMENT, LLC,

Plaintiffs-Appellants,

vs.

TROUT JONES GLEDHILL FUHRMAN,
P.A.; and DAVID T. KRUECK,
individually and in his capacity as a
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Defendants-Respondents.

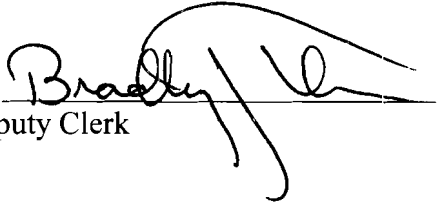
Supreme Court Case No. 38933

CERTIFICATE TO RECORD

I, CHRISTOPHER D. RICH, Clerk of the District Court of the Fourth Judicial District of the State of Idaho, in and for the County of Ada, do hereby certify that the above and foregoing record in the above-entitled cause was compiled and bound under my direction as, and is a true and correct record of the pleadings and documents that are automatically required under Rule 28 of the Idaho Appellate Rules, as well as those requested by Counsels.

I FURTHER CERTIFY, that the Notice of Appeal was filed in the District Court on the 27th day of June, 2011.

CHRISTOPHER D. RICH
Clerk of the District Court

By 
Deputy Clerk

CERTIFICATE TO RECORD

000205